

The **NORTH CAROLINA REGISTER**

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NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 1 page or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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Publication Schedule
 (October 1991 - December 1992)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date

10/01/91	09/10/91	09/17/91	10/31/91	10/31/91	11/20/91	02/01/92
10/15/91	09/24/91	10/01/91	10/30/91	11/14/91	11/20/91	01/01/92
11/01/91	10/11/91	10/18/91	11/16/91	12/01/91	12/20/91	02/01/92
11/15/91	10/24/91	10/31/91	11/30/91	12/15/91	12/20/91	02/01/92
12/02/91	11/07/91	11/14/91	12/17/91	01/01/92	01/20/92	03/01/92
12/16/91	11/21/91	12/02/91	12/31/91	01/15/92	01/20/92	03/01/92
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02/14/92	01/24/92	01/31/92	02/29/92	03/15/92	03/20/92	05/01/92
03/02/92	02/10/92	02/17/92	03/17/92	04/01/92	04/20/92	06/01/92
03/16/92	02/24/92	03/02/92	03/31/92	04/15/92	04/20/92	06/01/92
04/01/92	03/11/92	03/18/92	04/16/92	05/01/92	05/20/92	07/01/92
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11/02/92	10/12/92	10/19/92	11/17/92	12/02/92	12/20/92	02/01/93
11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93

* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st of the next calendar month.

EXECUTIVE ORDER NUMBER 151
GOVERNOR'S ADVISORY COMMISSION
ON MILITARY AFFAIRS

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. ESTABLISHMENT

The Governor's Advisory Commission on Military Affairs is hereby re-established. It shall be comprised of thirty (30) members. Fifteen (15) members are to be appointed by the Governor and serve for terms of two (2) years at the pleasure of the Governor. In addition to the fifteen (15) appointed members the following fifteen (15) will be permanent members: The Lieutenant Governor of North Carolina; the Chairpersons of the Military Affairs Committees of the North Carolina House of Representatives and the North Carolina Senate; the Secretaries of the Departments of Administration, Transportation, Environment, Health and Natural Resources, Crime Control and Public Safety, and Economic and Community Development; the base commanders of Fort Bragg, Camp Lejeune, Cherry Point and the Elizabeth City Coast Guard Air Station, the Wing Commanders of the 4th Tactical Fighter Wing and the 317th Tactical Airlift Wing and the Adjutant General of the North Carolina National Guard. The Governor shall designate one of the members as Chairperson.

Section 2. MEETINGS

The Commission shall meet regularly at the call of the Chairperson, the Governor, or the Secretary of Crime Control and Public Safety.

Section 3. DUTIES

The Commission shall have the following duties:

- (a) Provide a forum for the discussion of issues concerning major military installations in the State, active and retired military personnel and their families.
- (b) Formulate goals and objectives which enhance cooperation and understanding between the military components, the communities, our congressional delegation, the general public, and State, federal, and local governments.
- (c) Strengthen the State's role in securing defense related business for North Carolina businesses and in selling North Carolina products to North Carolina military bases.

- (d) Collect and study information related to supporting and strengthening the military presence within the State.
- (e) Review proposed military affairs legislation.
- (f) Advise the Governor on measures and activities which would support and promote defense installations and military families within the State.

Section 4. ADMINISTRATION

Support staff for the Commission shall be provided by the Department of Crime Control and Public Safety. Members shall serve without compensation but may receive reimbursement, contingent upon the availability of funds, for travel and subsistence in accordance with N.C.G.S. 138-5, 138-6, and 120-3.1.

Section 5. EFFECTIVE DATE AND EXPIRATION

The Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 11th day of September, 1991.

EXECUTIVE ORDER NUMBER 152
ESTABLISHING THE PERSIAN GULF WAR
MEMORIAL COMMISSION

WHEREAS, one-sixth (1/6) of the nearly 500,000 troops serving in the Persian Gulf War were residents of, or stationed in, North Carolina; and,

WHEREAS, a number of these servicemen and servicewomen from North Carolina gave their lives for their country during the Persian Gulf War.

THEREFORE, by the authority vested in me by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. ESTABLISHMENT

There is hereby established the Persian Gulf War Memorial Commission. It shall be comprised of the following:

1. Two members of families who lost relatives in the Persian Gulf to be appointed by the Governor.
2. The base commanders of
 - (a) Fort Bragg,
 - (b) Camp Lejeune,
 - (c) United States Marine Corps Air Station at Cherry Point,
 - (d) Seymour Johnson Air Force Base,
 - (e) Pope Air Force Base,

- (f) The Coast Guard Station at Fort Macon,
- (g) New River Air Station, and
- (h) Elizabeth City Coast Guard Air Station, or their designees.
- 3. One member from the North Carolina Veterans Council to be elected by the Council.
- 4. One member from the North Carolina Veterans Affairs Commission to be elected by the Commission.
- 5. The Adjutant General of the North Carolina National Guard.
- 6. The Senior Commander of the United States Army Reserve from North Carolina, deployed to the Persian Gulf.
- 7. The Lt. Governor of North Carolina.
- 8. The Secretary of the North Carolina Department of Administration.
- 9. The Secretary of the North Carolina Department of Crime Control and Public Safety.
- 10. The Director of the United States Department of Veteran Affairs Regional Office.

From among the membership the Governor shall appoint a Chairperson. The Commission shall meet at the call of the Chairperson.

Section 2. PURPOSE

The purpose of the Commission is to select a site for construction of a memorial, develop plans for funding, select a design for the memorial, and select a construction firm to construct the memorial. To this end the Commission shall establish itself as a nonprofit, Chapter 501c(3) corporation for the purpose of receipt of and expenditure of donated funds. At the completion of each of the aforementioned the Chairperson shall advise the Governor of the Commission's findings and results.

Section 3. ADMINISTRATION

Administrative support for the Commission shall be provided by the Department of Administration's Division of Veterans Affairs. There shall be no per diem paid to members of the Commission; however, necessary travel and subsistence allowance may be paid in accordance with N.C.G.S. 138-5, 138-6, and 120-3.1.

Section 4. EFFECTIVE DATE

This Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 11th day of September, 1991.

ADMINISTRATIVE ORDER

STATE OF NORTH CAROLINA

Office of Administrative Hearings

ORDER

Pursuant to G.S. 7A-752, Julian Mann, III, Chief Administrative Law Judge of the Office of Administrative Hearings, hereby duly designates Fred Gilbert Morrison, Jr., to serve in the capacity of Senior Administrative Law Judge with all the rights, duties and privileges as conferred in said Section.

Witness my hand and seal this the 1st day of October, 1991.

s/Julian Mann, III

Chief Administrative Law Judge

VOTING RIGHTS ACT FINAL DECISION LETTERS

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

JRD:LLT:NT:gmh
DJ 166-012-3
91-2483

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

September 13, 1991

Richard J. Rose, Esq.
Poyner & Spruill
P. O. Box 353
Rocky Mount, North Carolina 27802

Dear Mr. Rose:

This refers to six annexations (Ordinance Nos. 0-89-58, 0-90-17, 0-90-62, 0-90-63, 0-91-1, and 0-91-13); the designation of the annexed areas to election districts; and the delay in the 1991 municipal election to May 1992 for the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 15, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

VOTING RIGHTS ACT FINAL DECISION LETTERS

U.S. Department of Justice
Civil Rights Division

JRD:LLT:TGL:mn
DJ 166-012-3
91-2735

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

September 18, 1991

DeWitt F. McCarley, Esq.
City Attorney
P. O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to the annexation [Ordinance No. 2327 (1991)] and the designation of the annexation to an election district for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 25, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

TITLE 1 - DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to amend rule(s) cited as 1 NCAC 35 .0103, .0202, .0301 - .0303, .0403.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 10:00 a.m. on November 14, 1991 at Commission Room 5034, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003.

Reason for Proposed Action: To amend rules to provide for greater efficiency in the management of the State's Employees Combined Campaign.

Comment Procedures: Any interested person may present his/her comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling David McCoy, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003.

CHAPTER 35 - STATE EMPLOYEES COMBINED CAMPAIGN

SECTION .0100 - PURPOSE AND ORGANIZATION

.0103 ORGANIZATION OF THE CAMPAIGN

The Campaign Organization is as follows:

- (1) Chair. Each year the Governor ~~will~~ may appoint a State Combined Campaign Director from one of the Executive Cabinet or University Administration agencies. The Campaign Director or the Campaign Director's designee will serve as chair of the Campaign. The responsibilities of the Chair include setting the dates and approving the published materials for the Combined Campaign, contracting for the Statewide Campaign Manager, and serving as chair of the S.E.C.C. advisory committee.
- (2) Statewide Combined Campaign Advisory Committee. This ongoing committee serves as a central application point for all charitable organizations applying to participate in the S.E.C.C. and shall determine if the applicant agencies meet the approved criteria listed in Rule .0202 of this Chapter. The

Committee recommends overall policy for the Campaign to the Governor, the Campaign Director and necessary state agencies and sets the criteria for participation by charitable organizations. The Committee reviews the recommendations made by the Statewide Campaign Manager and accepts or rejects its recommendations. The Committee is composed of ten members appointed by the Campaign Director. Members of the Committee will initially serve staggered terms of one, two, and three calendar years determined by the Campaign Director. As each member's term expires, the replacement member will serve a three calendar year appointment.

- (3) Statewide Campaign Manager. Determines if the applicant agencies meet the approved criteria listed in Rule .0202 of this Chapter. Serves as the financial administrator for the Combined Campaign and as such is responsible for receiving reports from the local Combined Campaigns, for transmitting to each local campaign its share of the state employees payroll deduction funds, and for preparing an end of campaign report which summarizes all fiscal campaign activity including local audits. The Statewide Campaign Manager is also responsible for the printing and distribution of the pledge form, campaign report form, and collection envelopes.
- (4) ~~(3)~~ Local Campaign Chair. The Governor, if asked by the local charitable organizations accepted in to the Combined Campaign, will may appoint a an area representative of from either state government or the University ~~in the area~~ to serve as the local chair. This person will be responsible for forming a local advisory committee for ~~volunteer~~ recruitment of volunteer state employees, approval of local campaign literature, ~~approval~~, and the establishment of local goals as needed, and the distribution of any undesignated funds made available for distribution.
- (4) Master Account. Serves as the financial administrator for the Combined Campaign, and as such is responsible for receiving reports from the local Combined Campaigns; for transmitting to each local campaign its share of the state employees payroll deduction funds; and for preparing an end of campaign report which summarizes all fiscal campaign activity including local audits. The master account is also responsible for the printing and distribution of the pledge

form, campaign report form, and collection envelopes.

- (5) Local Campaign Manager. Once applications for acceptance into the campaign have been recommended to the Committee by the Statewide Campaign Manager, approved, a list of all accepted organizations will be prepared by the Statewide Combined Campaign Advisory Committee. Statewide Campaign Manager and distributed to all applicants. The State Campaign Manager will submit to the State Combined Campaign Director the name of an agency to serve as the local campaign manager. The Campaign Director will approve or reject the State Campaign Manager's recommendation and has the right to name the Local Campaign Manager. The organizations will decide among themselves which agency will serve as the local campaign manager. For the purpose of deciding on the manager, the accepted agencies will be divided into three groups, each of which will have one vote. The groups will be:

- (a) United Way;
- (b) National Health; and
- (c) Independent Agencies.

The local campaign manager is responsible for the printing and distribution of campaign literature, the collection of pledge reports and envelopes from the state agency volunteers, the development of campaign reports, and the forwarding of one copy of each payroll deduction pledge to the Statewide Campaign Manager master account. In addition, an end-of-campaign report shall be sent to the master account for inclusion in the required fiscal reports.

Note: A contract between the state and the Statewide Campaign Manager, and the state and local manager, will be executed in order to develop an acceptable audit trail. The contract contracts will allow a reasonable charge for campaign expenses to be claimed by the Statewide Campaign Manager and the local manager. This amount will be approved by the state. All terms and conditions of these contracts are subject to review and approval by the Campaign Director.

Statutory Authority G.S. 143B-10; 143-3.3.

SECTION .0200 - ELIGIBLE ORGANIZATIONS

.0202 CRITERIA FOR ACCEPTANCE

Organizations must meet the following criteria to be accepted as participants in the Combined Campaign:

- (1) The organization must be licensed to solicit funds in North Carolina.
- (2) Must be directed by an active Board of Directors, which meets regularly and whose members serve without compensation.
- (3) Have tax exempt status for both the IRS and N.C. tax purposes.
- (4) Must prepare and make available to the general public an annual financial report, which is certified by an independent public accountant, or IRS Form 990. An exception to this requirement is provided for any organization which has filed its Articles of Incorporation with the Secretary of State's Office as of March 1, of the preceding year of the current campaign.
- (5) If fundraising and administrative expenses are in excess of 25 percent of total revenue, must demonstrate to the satisfaction of the SECC that those expenses for this purpose are reasonable under all the circumstances of the case.
- (6) Must certify that all publicity and promotional activities are truthful and non-deceptive.
- (7) Must agree to the confidentiality of the contributor list, and must promise no unauthorized use of this list.
- (8) Must permit no payments of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fundraising, and permit no paid solicitations of the public.
- (9) Must have a policy of non-discrimination on the basis of race, color, religion, sex, age, national origin or physical or mental handicap for clients of the agency, employees of the agency and members of the governing board. Agencies which have been organized along religious lines, or which are organized to serve persons of a particular sex or race may be considered for eligibility if a bona fide purpose for organizing along such lines can be shown.
- (10) Must provide benefits or services within the local community, meaning that employees in the solicitation area or their families should be able to receive services from the agency within a reasonable distance, or receive benefits from voluntary agencies. Examples of services are:
 - (a) research and education in the health and welfare or education fields;
 - (b) family and child care services;
 - (c) protective services for children and adults;
 - (d) services for children and adults in foster care;
 - (e) services related to the management and maintenance of the home;

- (f) day care services for adults and children;
- (g) transportation services, information referral and counseling services;
- (h) the preparation and delivery of meals;
- (i) adoption services;
- (j) emergency shelter care and relief services;
- (k) safety services;
- (l) neighborhood and community organization services;
- (m) recreation services;
- (n) social adjustment and rehabilitation services;
- (o) health support services; or
- (p) a combination of services designed to meet the needs of special groups such as the elderly or handicapped.

However, an international organization which provides health and welfare services overseas, whose activities do not require a local presence and which meet other eligibility criteria, may be accepted for participation in the campaign.

Statutory Authority G.S. 143-10; 143-3.3.

SECTION .0300 - APPLICATION PROCESS AND SCHEDULE

.0301 SCHEDULE

Complete applications must be submitted to the State Campaign Committee by March 4 February 15 annually to be included in the fall campaign. Incomplete applications ~~will~~ may not be considered by the Committee. The Chair will forward all application materials to the Statewide Campaign Manager within three working days after the closing deadline. The Statewide Campaign Manager will report to the Committee its recommendation on each application within three weeks of the closing deadline. The Committee shall affirm or reject the recommendation by the Statewide Campaign Manager and will inform the Statewide Campaign Manager of its decision.

Statutory Authority G.S. 143B-10; 143-3.3.

.0302 RESPONSE

All applicants will be notified by the Statewide Campaign Manager of their acceptance or rejection the Committee's decision within 30 days of the closing deadline. An applicant who is dissatisfied with the determination of its application may file an appeal to the State Advisory Committee within 10 days of the notification dispatch date. An applicant who is dissatisfied with the appeal determination of the Committee may commence a contested case by filing a peti-

tion under 150B-23 within ~~30~~ 15 days of notification dispatch date receiving notice of the appeal determination. An appeal will not be allowed to delay the start of the campaign.

Statutory Authority G.S. 143B-10; 147-62.

.0303 FORM AND CONTENT OF APPLICATION

All organizations seeking funding must submit an application to the state campaign. The application must include the State Employees Combined Campaign Certificate of Compliance. Included in or attached to the Certificate of Compliance must be:

- (1) A letter from the Board of Directors indicating interest.
- (2) A complete description of services provided, and the service area of the organization.
- (3) The most recent audited financial statement prepared by a CPA. An exception to this requirement is provided for any organization which has filed its Articles of Incorporation with the Secretary of State's Office as of March 1, of the preceding year of the current campaign, for the previous year, including the most recent audit.
- (4) A board statement of assurance of non-discrimination.
- (5) A description of the origin, purpose and structure of the organization.
- (6) A list of the current members of the Board, including addresses.
- (7) A letter certifying compliance with the eligibility standards listed in Rule .0202 of this Chapter including tax exempt status, licensing, and showing the percentage of funds expended in the categories of Program and Service, Management and General (Administrative) and Fundraising.

Statutory Authority G.S. 143B-10; 143-3.3.

SECTION .0400 - GENERAL PROVISIONS

.0403 PAYROLL DEDUCTION

Payment may be made by payroll deduction, cash, pledge, or personal check. If an employee chooses to use the payroll deduction method of contributing, he/she must agree to having the deduction continue for one year with equal amounts being taken from each check (monthly or biweekly depending on the payroll). All deductions will start with the January payroll and continue through December. If the employee discontinues employment, or actively chooses to discontinue payment, the state will not be responsible for the collection of the unpaid pledge.

No deduction will be made for any period in which the employee's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustments will be made in subsequent periods to make up for deductions missed.

Statutory Authority G.S. 143B-10; 143-3.3.

TITLE 7 - DEPARTMENT OF CULTURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Cultural Resources/Archives and History intends to adopt rule(s) cited as 7 NCAC 4P .0016.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 10:00 a.m. on November 18, 1991 at Room 305, Archives and History, State Library Bldg., 109 E. Jones Street, Raleigh.

Reason for Proposed Action: To provide for public use of research files in the Civil War Roster Branch and to implement a fee for photocopies of these research materials.

Comment Procedures: Written comments to Dr. Wm. S. Price Jr., 109 E. Jones Street, Raleigh 27601-2807 by 5:00 p.m., Friday, November 15, 1991.

CHAPTER 4 - DIVISION OF ARCHIVES AND HISTORY

SUBCHAPTER 4P - HISTORICAL PUBLICATIONS SECTION

.0016 CIVIL WAR ROSTER RESEARCH FILES REGULATIONS

Regulations governing public use of the research files in the offices of the Civil War Roster Branch are as follows:

- (1) Direct access to the service record materials in the files of the Civil War Roster Branch shall be by appointment only at reasonable times under the supervision of the head of the Civil War Roster Branch.
- (2) Direct access shall be granted if, in the judgment of the head of the Civil War Roster Branch, the research to be undertaken cannot be duplicated in the search room of the state archives.

(3) Materials may not be removed from the offices of the Civil War Roster Branch.

(4) Photocopies will be made on an "as you wait" basis if the equipment and an operator are available. The costs of such photocopies shall be the same as those charged by the state archives as contained in Subchapter 4M, Section .0100, Rule .0105(8), of this Chapter.

Statutory Authority G.S. 121-4(4),(5),(14); 121-6(a); 143B-62(1)a.g.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Human Resources/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26H .0504.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 1:30 p.m. on November 14, 1991 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 297, Raleigh, North Carolina 27603.

Reason for Proposed Action: The Division now has hospital lower level skilled care and intermediate care payment rates available.

Comment Procedures: Written comments concerning this amendment must be submitted by: November 14, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0500 - REIMBURSEMENT FOR SERVICES

.0504 INPATIENT HOSPITAL: INAPPROPRIATE LEVEL OF CARE

(a) No The state agency may grant a maximum of three administrative days will be granted to arrange for discharge of a patient to a lower level-of-care. With prior approval by the State Medicaid Agency. However, the hospital may be reimbursed for days in excess of the three ad-

ministrative days at the state-wide average rate for the particular level of care intermediate nursing care, skilled nursing care or ventilator-dependent nursing care needed in the event a lower level of care bed in a Medicaid approved health care institution is not available. The hospital must, however, make every effort to place the recipient in an appropriate institution. within the three day administrative time allowance. Prior approval by the State Medicaid agency for the lower level of care is required in accordance with 10 NCAC 26B .0108 and 10 NCAC 26B .0114.

(b) This policy applies to:

- (1) acute care hospitals;
- (2) mental hospitals;
- (3) speciality hospitals.

Authority G.S. 108A-25(b); 42 C.F.R. 447.253; S.L. 1985, c. 479, s. 86.

TITLE II - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule(s) cited as 11 NCAC 11C .0130.

The proposed effective date of this action is February 1, 1992.

Instructions on how to demand a public hearing (must be requested in writing within 15 days of notice): Submit in writing, by certified mail, return receipt requested, the request to William K. Hale, Dept. of Insurance, P.O. Box 26387, Raleigh, N.C. 27611.

Reason for Proposed Action: The rule replaces statutes that were inadvertently repealed six months before the effective date of the statutes that will replace the repealed statutes.

Comment Procedures: Written comments may be sent to Ray Martinez, P.O. Box 26387, Raleigh, NC 27611. Anyone having questions should call Ray Martinez at (919) 733-2002, or Ellen Sprenkel at (919) 733-4529.

Editor's Note: This Rule was filed as a temporary rule effective September 12, 1991 for a period of 180 days to expire on March 10, 1992.

CHAPTER II - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11C - ANALYSIS AND EXAMINATIONS

SECTION .0100 - GENERAL PROVISIONS

.0130 CREDIT FOR REINSURANCE

(a) As used in this Rule and in G.S. 58-7-30 and G.S. 58-7-32:

- (1) "Insurance risk" means an uncertainty regarding the ultimate amount of any claim payment (underwriting risk) or an uncertainty regarding the timing of such payments (timing risk).
- (2) "Insurer" includes an underwriting member of an insurance exchange.
- (3) "Liability" includes all reserves.
- (4) "Reinsurance" means a transfer of insurance risk from a ceding insurer to an assuming insurer.
- (5) "Same standards of solvency" means, at a minimum, the capital and surplus requirements applicable to a domestic insurer transacting the same lines of insurance or reinsurance.

(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when:

- (1) The reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance or otherwise accredited as a reinsurer in this State; or licensed in at least one state that employs standards regarding credit for reinsurance substantially similar to those applicable under this Paragraph and the assuming insurer conforms to the same standards of solvency that would be required of the insurer if it were licensed in this State; or
- (2) The reinsurance is ceded to an assuming insurer that maintains a trust fund in a United States bank or trust company for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. To enable the Commissioner to determine the sufficiency of the trust fund, the assuming insurer shall annually report to the Commissioner information substantially the same as that required to be reported by licensed insurers on the National Association of Insurance Commissioners annual statement form. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, shall include a trusteed surplus of not less than

twenty million dollars (\$20,000,000). In the case of a group of individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, shall include a trustee surplus of not less than one hundred million dollars (\$100,000,000); and the group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants. This trust shall be established in a form approved by the Commissioner in a United States bank or trust company that is a member of the Federal Reserve System. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Commissioner. The trust described in this Subparagraph must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustees of the trust shall report to the Commissioner in writing, set forth the balance of the trust, and list the trust's investments at the preceding year's end; and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31; or

- (3) The reinsurance is ceded to an assuming insurer not meeting the requirements of Subparagraphs (b)(1) or (b)(2) of this Rule, but only with respect to the insurance of risks located in jurisdictions other than the United States where such reinsurance is required by applicable law or regulation of that jurisdiction; and
- (4) The reinsurance is documented by a policy, certificate, treaty, or other form of agreement that is properly executed by an authorized officer of the assuming insurer. In the event that the reinsurance is ceded through an underwriting manager or agent, the manager or agent shall provide to the domestic ceding insurer evidence

of his authority to assume reinsurance for and on behalf of the assuming insurer. The evidence shall consist of either an acceptable letter of authority executed by an authorized officer of the assuming insurer or a copy of the actual agency agreement between the underwriting manager or agent and the assuming insurer; and the evidence shall be specific as to the classes of business within the authority and as to the term of the authority.

(c) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this State, the credit permitted by Subparagraphs (b)(1) and (b)(2) of this Rule shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

- (1) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, will submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give that court jurisdiction, and will abide by the final decision of that court, or of any appellate court in the event of an appeal; and
- (2) That the assuming insurer will designate the Commissioner as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

This Paragraph shall not conflict with the obligation of parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

(d) A reduction from liability for reinsurance ceded to an assuming insurer that does not meet the requirements of Paragraphs (a) through (c) of this Rule shall be allowed in an amount that does not exceed the liabilities carried by the ceding insurer for funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the contract, if that security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; and, in the case of a trust, held in a United States bank or trust company that is a member of the Federal Reserve System. This security may be in the form of:

- (1) Cash;

- (2) Securities that are listed by the Securities Valuation Office of the National Association of Insurance Commissioners and that are qualified as admitted assets;
- (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a bank or trust company that is a member of the Federal Reserve System; or
- (4) Any other form of security that is acceptable to the Commissioner.
- (e) A foreign or alien insurance company may be admitted and authorized to do business when it satisfies the Commissioner that it is in substantial compliance with the provisions of this Rule, G.S. 58-7-30, and G.S. 58-7-32.

Statutory Authority G.S. 58-2-40(1); 58-7-1.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Certified Public Accountant Examiners intends to amend rule(s) cited as 21 NCAC 8G .0306; and adopt rule(s) cited as 21 NCAC 8G .0313.

The proposed effective date of this action is March 1, 1992.

The public hearing will be conducted at 10:00 a.m. on December 16, 1991 at the N.C. State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605.

Reason for Proposed Action: The Board was requested by licensees for amendment to the rules.

Comment Procedures: Any person interested in these rules may present oral comments relevant to the action proposed at the public rule-making hearing or deliver written comments to the Board office not later than 5:00 p.m., Monday, December 2, 1991. Anyone planning to attend the hearing should notify the Board office by 5:00 p.m. on Monday, December 2, 1991, whether they wish to speak on the proposals and whether they will speak in favor or against them. Anyone speaking on the proposals will be limited to 10 minutes.

Editor's Note: 21 NCAC 8G .0313 has been filed as a temporary adoption effective September 25, 1991 for a period of 180 days to expire on March 22, 1992.

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

SUBCHAPTER 8G - PROFESSIONAL ETHICS AND CONDUCT

SECTION .0300 - OTHER RESPONSIBILITIES

.0306 FIRM NAME OR STYLE OF A PRACTICE

Any person, partnership, professional corporation or professional association engaged in the practice of public accountancy (as defined in 21 NCAC 8A .0307 and .0308), other than existing firms practicing in the name of current or former partners or shareholders, must use the words "Certified Public Accountant(s)" or "CPA(s)" as part of or with their firm name. Use by a CPA practicing public accountancy by himself of any name other than his own name, or use by a partnership, a professional corporation or a professional association engaged in the practice of public accountancy of any name other than the names of one or more of its current or former partners or shareholders, must be approved in advance by the Board.

Statutory Authority G.S. 55B-5; 93-12(9).

.0313 FIRM NAME

Notwithstanding any other provisions of these Rules, any existing firm practicing in the name of current or former partners or shareholders is not required to use the words "Certified Public Accountant(s)" or "CPA(s)" as part of or with its firm name.

Statutory Authority G.S. 55B-5; 93-12(9).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to amend rule(s) cited as 21 NCAC 32B .0101, .0305, .0314 - .0315.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 8:00 a.m. on November 14, 1991 at the Embassy Suites Hotel, 4700 Creedmoor Road, Raleigh, N.C.

Reason for Proposed Action: Rule .0101 - Definition is added to define a term included in amendments to rules within Subchapter 32B. Rule .0305 - To provide other avenues for licensure.

Rule .0314 - To reflect amendment to Rule .0305.
Rule .0315 - Allow the Board discretion in accepting continuing medical education as a qualification for licensure.

Comment Procedures: Persons interested may present oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed to the following address: Administrative Procedures, NC Board of Medical Examiners, P.O. Box 26808, Raleigh, NC 27611-6808.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32B - LICENSE TO PRACTICE MEDICINE

SECTION .0100 - GENERAL

.0101 DEFINITIONS

The following definitions apply to Rules within this Subchapter:

- (1) ACGME - Accreditation Council for Graduate Medical Education.
- (2) AOA - American Osteopathic Association.
- (3) Board - Board of Medical Examiners of the State of North Carolina.
- (4) ECFMG - Educational Commission for Foreign Medical Graduates.
- (5) Fifth Pathway - an avenue for licensure as defined in the Directory of Accredited Residencies 1977-1978, American Medical Association, pp. 30-32. The Directory is adopted by reference under G.S. 150B-14(b).
- (6) FLEX - Federation Licensing Examination.
- (7) LCME - Liaison Commission on Medical Education.
- (8) SPEX - Special Purpose Examination.
- (9) AMA Physician's Recognition Award - AMA recognition of achievement by physicians who have voluntarily completed programs of continuing medical education.
- (10) American Specialty Boards - specialty boards approved by the American Board of Medical Specialties.

Statutory Authority G.S. 90-6.

SECTION .0300 - LICENSE BY ENDORSEMENT

.0305 EXAMINATION BASIS FOR ENDORSEMENT

(a) To be eligible for license by endorsement of credentials, graduates of medical schools approved by the LCME or AOA must supply cer-

tification of passing scores on one of the following written examinations:

- (1) National Board of Medical Examiners;
 - (2) FLEX - under ~~Rule .0312~~ Rule .0314 of this Section;
 - (3) Written examination other than FLEX from the state board which issued the original license by written examination; or
 - (4) National Board of Osteopathic Examiners, all parts taken after January 1, 1990.
- (b) Graduates of medical schools not approved by LCME or AOA must supply certification of passing scores on one of the following written examinations:
- (1) FLEX - under ~~Rule .0312~~ Rule .0314 of this Section; and or
 - (2) Written examination other than FLEX from the state board which issued the applicant's original license by written examination together with American Specialty Board certification.
- (c) A physician who has a valid and unrestricted license to practice medicine in another state, based on a written examination testing general medical knowledge, and who within the past five years has become, and is at the time of application, certified or recertified by an American Specialty Board, is eligible for license by endorsement.
- (d) Applicants for license by endorsement of credentials with FLEX scores that do not meet the requirements of Rule .0314 of this Section must meet the requirements of Paragraph (c) of this Rule.

Statutory Authority G.S. 90-10; 90-13.

.0314 PASSING FLEX SCORE

Physicians who have ~~been licensed in another state on the basis of a taken the~~ FLEX examination may be eligible to apply for a license by endorsement of credentials if they meet the following score requirements:

- (1) FLEX taken before January 1, 1983 - A FLEX weighted average of 75 or more on a single three day examination is required.
- (2) FLEX taken after January 1, 1983 - A FLEX weighted average of 75 or more on a single three day examination, with a score not less than 70 on Day I, a score not less than 75 on Day II, and a score not less than 75 on Day III, is required.
- (3) FLEX taken after January 1, 1985:
 - (a) A score of at least 75 on FLEX Component I and a score of at least 75 on FLEX Component II is required.
 - (b) Components may be taken in tandem. Any component that is failed may be re-

taken; however, Component II may not be taken alone unless the applicant has passed Component I within the last seven years.

- (c) Both components must be passed within seven years of the date of taking the initial examination.

Statutory Authority G.S. 90-6; 90-10; 90-13.

.0315 TEN YEAR QUALIFICATION

(a) To be eligible for license by endorsement of credentials, an applicant who has not met one of the following qualifications within the past ten years of the date of the application to the Board, must take the SPEX, or other examination as determined by the Board, and attain a score of at least 75:

- (1) National Board of Medical Examiners certification;

(2) FLEX scores as required under Rule .0314 of this Section;

(3) SPEX score of at least 75;

(4) certification or re-certification from a specialty board recognized by the American Board of Medical Specialties; or

(5) ~~completed~~ completion of formal postgraduate medical education as required under Rule .0313 of this Section.

~~(6) AMA Physician's Recognition Award.~~

(b) The SPEX requirement may be waived upon receipt of a current AMA Physician's Recognition Award.

(c) This requirement is in addition to all other requirements for licensure and may be applied as the Board deems appropriate.

Statutory Authority G.S. 90-11; 90-13.

Adopted rules filed by the Department of Revenue are published in this section. This department is not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Effective October 1, 1991, the Departments of Correction and Revenue are subject to G.S. 150B, Article 2A. The rules appearing in this section were filed prior to October 1, 1991 and are not subject to the notice requirements.

Upon request from the adopting agency, the text of rules will be published in this section.

**TITLE 5
DEPARTMENT OF CORRECTION**

CHAPTER 2 - DIVISION OF PRISONS

SUBCHAPTER 2A - ORGANIZATION AND PERSONAL CONDUCT (REPEALED)

SECTION .0100 - ORGANIZATION OF THE DIVISION OF PRISONS

.0101 GENERAL

.0102 SECTION CHIEFS WITH SPECIFIC MANAGEMENT FUNCTIONS

.0103 SECTION CHIEFS WITH AUTHORITY OVER FACILITIES

*History Note: Statutory Authority G.S. 143B-10; 148-4; 148-11; 148-19; 148-22;
Eff. February 1, 1976;
Repealed Eff. November 1, 1991.*

SECTION .0200 - CONDUCT OF EMPLOYEES

.0201 GENERAL

.0202 CONDITIONS OF EMPLOYMENT

*History Note: Statutory Authority G.S. 148-3; 148-11; 148-23;
Eff. February 1, 1976;
Amended Eff. July 1, 1987; May 1, 1987; August 1, 1983;
Repealed Eff. November 1, 1991.*

SECTION .0300 - APPEARANCE REGULATIONS

.0301 GENERAL

.0302 APPEARANCE

*History Note: Statutory Authority G.S. 143B-262; 148-11;
Eff. November 1, 1976;
Repealed Eff. November 1, 1991.*

SECTION .0400 - EMPLOYEE PERFORMANCE APPRAISAL

.0401 GENERAL

.0402 PROCEDURES

*History Note: Statutory Authority G.S. 143B-261.1; 143B-361.1;
Eff. December 12, 1977;
Repealed Eff. November 1, 1991.*

SECTION .0500 - CERTIFICATION REQUIREMENTS FOR EDUCATIONAL PERSONNEL

- .0501 GENERAL**
- .0502 DEFINITIONS AND EMPLOYMENT STANDARDS**
- .0503 PROVISIONAL CERTIFICATION**
- .0504 CERTIFICATION AND CERTIFICATION RENEWAL**
- .0505 FAILURE TO MAINTAIN CURRENT CERTIFICATION**
- .0506 CERTIFICATION RENEWAL PROCEDURE**
- .0507 IN-SERVICE TRAINING FOR TEACHERS**
- .0508 SALARY SCHEDULES OF CERTIFICATED PERSONNEL**
- .0509 STATEMENT OF JOB DUTIES AND RESPONSIBILITIES**
- .0510 HIRING PROCEDURES**

*History Note: Statutory Authority G.S. 115C-110; 115C-295; 115C-296; 115C-297;
Eff. July 1, 1985;
Repealed Eff. November 1, 1991.*

SUBCHAPTER 2B - INMATE CONDUCT RULES: DISCIPLINE

SECTION .0100 - GOOD TIME AND GAIN TIME

.0101 PURPOSE

(a) The General Statutes authorize the awarding of various sentence reduction credits to selected inmates. The awarding of such credits serves as an incentive for inmates to be productive and act responsibly. Effective and efficient allocation of good time and gain time awards is a critical element for maintaining order, security, and appropriate management of the inmate population.

(b) This policy establishes a method of computing sentence reduction credits in the form of Good Time for satisfactory behavior, Gain Time for participation in work or program assignments, and meritorious time for behavior or specific acts not normally required of an inmate. This policy applies to inmates confined in any facility in the Division of Prisons of the North Carolina Department of Correction, a jail, a regional confinement facility, a "County Farm", or any other local confinement facility established for the incarceration of convicted offenders.

*History Note: Statutory Authority G.S. 148-11; 148-13; 15A-1340.7;
Eff. February 1, 1976;
Amended Eff. November 1, 1991; September 1, 1983; February 1, 1982;
February 23, 1981.*

.0102 GOOD TIME

(a) Award of Good Time. With the exception of those inmates serving sentences as specified in Rules .0106, .0107, and .0108 and those inmates convicted of Class A and B felonies committed after the Fair Sentencing Act became effective, all inmates shall be awarded good time credits at the rate of one day deducted from the inmate's prison or jail term for each day the inmate spends in custody without a major infraction of prison conduct rules.

(b) Forfeiture. Good Time shall be subject to forfeiture through disciplinary action for conviction of major infractions as the result of violations of prison conduct rules.

(c) Restoration of Forfeited Good Time. Good Time forfeited through disciplinary action may be restored by unit superintendents, area administrators, institution heads, and, in the case of inmates confined to local confinement facilities, the sheriff or administrator of a regional confinement facility. Such restoration shall be based upon documented incidents of improved behavior by the inmate.

*History Note: Filed as a Temporary Amendment Eff. April 1, 1983 for a
Period of 60 Days to Expire on June 1, 1983;
Statutory Authority G.S. 148-11; 148-13; 15A-1340.7;
Eff. February 1, 1976;
Amended Eff. November 1, 1991; April 1, 1985; September 1, 1983; June 1, 1983.*

.0103 GAIN TIME

(a) Regular Gain Time. Inmates other than those convicted of felonies committed after the effective date of the Fair Sentencing Act who perform work, whether full-time or part-time, or participate in specific training programs which would assist their productive re-entry into the community, shall be allowed sentence reduction credits which shall be regulated as Regular Gain Time I, II, and III. Regular Gain Time shall not be subject to forfeiture for misconduct and shall be administered as follows:

- (1) Regular Gain Time I. In addition to Regular Good Time credits, inmates who perform short-term work assignments and/or who participate in specific training programs requiring a minimum of four hours of productive activity per day shall receive credit at the rate of two days per month.
- (2) Regular Gain Time II. In addition to the Regular Good Time credits, all inmates who satisfactorily perform job assignments and/or who participate acceptably in specific training programs requiring a minimum of six hours per day shall receive credit at the rate of four days per month.
- (3) Regular Gain Time III. In addition to Regular Good Time credits, all inmates performing assigned jobs with requirements for special skills or specialized responsibilities such as specialized maintenance, cook, equipment operator, canteen operator, or inmates participating in fulltime specific training programs requiring a minimum of six hours per day shall receive credit at the rate of six days per month.

(b) Fair Sentence Gain Time. Inmates convicted of felonies committed on or after the effective date of the Fair Sentencing Act shall be allowed sentence reduction credits which shall be regulated as Fair Sentence Gain Time I, II, and III. The credit received shall be calculated for work performed as listed in Rule .0103(a)(1), (2), and (3). Credit shall be received for participation in study and rehabilitative programs after June 3, 1985, as calculated by using the categories in Rule .0103(a)(1), (2), and (3).

(c) Meritorious Time. The Director of the Division of Prisons or the Director's designated representative may award additional sentence reduction credits to deserving inmates. Such awards shall not exceed 30 days per month for work performed nor 30 days for each act of exemplary conduct. Consideration for meritorious time awards will be based upon the following categories:

(1) Work Performed.

(A) Overtime. Overtime is defined as satisfactory performance in a job and/or program activity beyond a regular forty-hour work week. Inmates assigned to the Work Release Program are not eligible to receive overtime based on a work release job. Fair Sentence inmates are not eligible to receive overtime based upon a program assignment. Fair Sentence inmates may receive overtime based on work performed.

(B) Adverse Working Conditions. Inmates are eligible for additional sentence reduction credit for work performed during inclement weather. Inclement weather is defined as a chill factor of below 20 degrees Fahrenheit or a temperature above 95 degrees Fahrenheit. Such conditions may include rain, sleet, snow, or other unusual or abnormal circumstances as determined by the appropriate approving authority.

(C) Emergency Conditions. Inmates are eligible for additional sentence reduction credits for work performed during emergency conditions. Facility Superintendents will determine when an emergency condition exists. Such emergency conditions may include power failures, forest fires, work stoppages, riots, state-wide emergencies established by the State Emergency Response network or other similar emergency conditions.

(2) Exemplary Conduct.

(A) Exemplary Acts. Inmates are eligible for additional sentence reduction credits, not to exceed 30 days for each act, based upon the performance of exemplary acts. Exemplary acts are defined as unusual deeds or acts performed by an inmate.

(B) Exceptional Educational Achievements. Inmates attaining an educational degree are eligible for additional sentence reduction credits at a rate of 30 days per achievement. These awards are limited to successful completion of the General Educational Development Test (GED), receipt of a vocational trades license or trades certification based on successful completion to a formal program of vocational course work and supervised training, the attainment of a Associate of Arts or Science Degree (AA, AS), or the achievement of a Bachelor of Arts or Science Degree (BA, BS) or Graduate Degree (MA, MS, Ph.D., etc.). Inmates identified as Exceptional Students Program participants or other inmates identified as special students by educational authorities may be awarded an additional five days per month for documented positive progress towards established educational goals in keeping with their individual education plans.

(3) Prison Population Reduction. Inmates may be eligible for additional sentence reduction credits for good conduct during prison population reduction pursuant to G.S. 148-13(b) and (d).

*History Note: Filed as a Temporary Amendment Eff. March 21, 1987
For a Period of 43 Days to Expire on May 1, 1987;
Statutory Authority G.S. 148-11; 148-13; 15A-1340.7;
Eff. February 1, 1976;
Amended Eff. November 1, 1991; May 1, 1987; October 1, 1985; September 1, 1985.*

.0104 PROCEDURE

- (a) Recording Sentence Reduction Credits.
- (1) Recording. Good Time will be computed automatically on the inmate's record. Gain Time, Meritorious Time, and Restored Good Time awards must be initiated by the unit superintendent or institution head upon the designated reduction credit form and shall be approved as provided in Paragraphs (b) and (c) of this Rule. Transfers automatically terminate Regular and Fair Sentence Gain Time status for inmates in the custody of the Division of Prisons.
 - (2) Accumulation. Meritorious Time awards will be accumulated and recorded on an hour for hour basis including credits accumulated for part-time assignment or for multiple part-time activity participation and submitted in whole days, except such credits may be authorized for an exemplary act at a rate not to exceed 30 days for each act to the appropriate approving authority. A whole day is defined as eight hours.
 - (3) Local Confinement Facilities. In the case of inmates confined to local confinement facilities, pursuant to court commitment, the sheriff or administrator of a local confinement facility shall establish procedures for granting, approving, and documenting sentence reduction credits. In the case of inmates confined to local confinement facilities, pursuant to a contractual agreement with the Department of Correction, the sheriff or administrator shall forward recommendations for granting sentence reduction credits to the Division of Prisons' designated approving authority as listed in .0104(b). The Division of Prisons' approving authority will either approve, modify, or disapprove the award. All Division of Prisons' authorized credits shall be recorded upon the sentence reduction credit form.
 - (4) Recommendations and Submission. Sentence reduction credits will be submitted only by the unit of permanent assignment for inmates in the custody of the Division of Prisons. Recommendations for sentence reduction credits for such inmates housed temporarily at a prison facility other than the regular unit of permanent assignment will be forwarded to the unit of permanent assignment for approval and recording documentation.
- (b) Approving Authorities. Sentence reduction credit awards are subject to approval as follows:
- (1) Unit superintendents shall have authority to approve Gain Time awards and to approve Meritorious Time awards and to make lost good time restoration awards not to exceed 10 days per month per inmate.
 - (2) Institution heads shall have authority to approve Gain Time awards and to approve Meritorious Time awards and to make lost good time restoration awards not to exceed 30 days per month per inmate.
 - (3) Area administrators shall have authority to approve Meritorious Time awards and to make lost good time restoration awards not to exceed 30 days per month per inmate.
 - (4) All Meritorious Time awards and restoration of lost good time awards which exceed 30 days in a month must be approved by the Director of the Division of Prisons.

*History Note: Statutory Authority G.S. 15A-1340.7; 148-11; 148-13;
Eff. February 1, 1982;
Amended Eff. November 1, 1991; August 1, 1986; September 1, 1983.*

SECTION .0200 - DISCIPLINARY PROCEDURES

.0201 GENERAL

- (a) Initial. Any member of the state correction service or other authorized person who witnesses what appears to be an act of misconduct by an inmate should take appropriate action to prevent continuation of any actual misbehavior by that inmate. Counseling may be sufficient and should be tried when no additional action appears necessary to stop the misbehavior and prevent a recurrence. Assistance should be obtained from other personnel when needed to enforce discipline with minimum risk

to persons or property. The inmate may be placed in administrative segregation when this action appears to be necessary to control that inmate or to prevent further disorder.

(b) Reports. When an observer of apparent misconduct by an inmate concludes that counseling will not be sufficient action because the suspected offender does not appear responsive or because of the seriousness of the suspected offense or when an inmate observes serious misconduct, the observer should report the matter to the officer designated by the superintendent to investigate offenses committed.

(c) Investigations

- (1) The designated officer should begin his investigation as soon as possible, and in any event within 24 hours after being notified of a suspected offense, unless criminal prosecution is contemplated, in which case the criminal investigators should initiate their investigation before the investigation for disciplinary procedures begins. He should discuss the matter with the person reporting the incident and with the inmate or inmates accused. Where necessary to ascertain the true facts, he should interview other witnesses, make searches, and employ other appropriate investigatory techniques.
- (2) When the investigating officer is satisfied he has learned the relevant facts, he may dismiss the charges if he concludes that the facts do not justify further proceedings. In that event, he should explain his action to the person reporting the suspected offense and also to the inmate accused.
- (3) If the investigating officer concludes that the facts found do justify further proceedings, he should obtain written and signed statements from the person reporting the suspected offense, from the suspected offender, and from the other persons providing pertinent information.
- (4) The accused inmate should be advised by the investigating officer that:
 - (A) He has the right to submit names of requested defense witnesses and have them called to testify provided the calling of witnesses does not jeopardize or threaten institutional or individual security.
 - (B) The number of witnesses will be limited to avoid useless repetition of the same evidence to be presented at the hearing. Physical evidence will only be preserved upon written request of the inmate and provided that retaining or presenting the evidence does not threaten institutional or an individual's security.
- (5) The investigating officer should take written statements from all witnesses. If statements are not taken from all witnesses, the investigating officer should record their names with an explanation for not taking their statements.
- (6) The investigating officer should make written notes of any observations made by him during the course of the investigation which directly relate to the alleged offense, and he should take under his control any physical evidence available. Upon completion of the investigation, this officer should make such changes in the status of the accused as seem warranted by the facts found.
- (7) The results of the investigation should be presented to the superintendent as soon as possible. If more than 48 hours are required to make the investigation and present the results, authority to extend the time should be obtained in writing from the unit superintendent or institution head who should establish the time period of extension. Before the superintendent grants the extension of time, he should indicate on the DC-138A whether the inmate will be placed or continued on administrative segregation and the reasons for this decision.

(d) Definitions. The word "unit" used in this Section is to be understood to refer to any confinement facility of the Division of Prisons. The term "superintendent" will be interpreted as including the warden at Central Prison.

History Note: Statutory Authority G.S. 148-11;

Eff. February 1, 1976;

Amended Eff. November 1, 1991; December 1, 1986; June 1, 1984.

.0202 DISPOSITION BY SUPERINTENDENT OR DESIGNEE

(a) The superintendent should first determine whether the investigation report indicates that he may dispose of the matter by counseling the inmate or inmates concerned. The investigation report in such cases should be filed at the unit together with a signed statement regarding the superintendent's action.

(b) If the superintendent or his designated representative decides formal disciplinary action is required, he should fill out an offense report. He should make such changes in the status of the accused as he feels appropriate pending a hearing on the matter. The superintendent, or his designated representative, should indicate on the DC-138A whether the inmate will be placed or continued on administrative segregation pending the disciplinary hearing and the reasons for this decision.

(c) The superintendent or his designated representative should make a preliminary determination as to whether the alleged offense should be classified as minor or major. He should be guided in this regard by the classification of offenses in 5 NCAC 2B .0300. If he decides that an offense classified as minor in 5 NCAC 2B .0300 should be dealt with as a major offense in a given case, he should state in writing the matters in aggravation that he deems to justify such handling; if he decides that an offense classified as major in 5 NCAC 2B .0300 should be dealt with as a minor offense, he should state in writing the matter in mitigation that he deems to justify this decision. He should sign this statement and include it in the case records.

(d) When the superintendent or his designated representative decides that an accused is to be dealt with by formal disciplinary action, he should give the accused notice in writing of the charge including a statement of the misconduct alleged and of the rules this conduct is alleged to violate. If the offense charged is classified as minor by the superintendent or his designated representative, he should ask the accused whether he admits guilt. If so, the superintendent or his designated representative, should allow the offender to make a statement. The substance of the statement should be summarized in the record. The superintendent or his designated representative, should then decide on the disposition. He may impose any measure authorized as a disposition for minor offenses, or he may suspend such imposition on condition of good behavior for a stated period of time not to exceed three months. He should note his decision on the offense report.

(e) If the accused denies guilt where a minor offense is charged, the superintendent should order the accused to appear before a unit disciplinary committee. Where major infractions are alleged, the matter will be referred to an area disciplinary committee. Referrals to a disciplinary committee should be made by the superintendent or his designated representative within 48 hours after he receives the investigation report. In any case where this is not possible, the reason for the delay should be explained in writing by the superintendent or his designated representative, and his signed statement respecting this should be made a part of the case record.

*History Note: Statutory Authority G.S. 148-11;
Eff. February 1, 1976;
Amended Eff. November 1, 1991; June 1, 1984.*

.0203 DISCIPLINARY COMMITTEES

(a) Unit Disciplinary Committee

- (1) The superintendent should appoint one or more disciplinary committees from the staff of his unit to hear and determine the disposition of minor offenses charged against inmates assigned to his unit. These committees should be composed of three members chosen so as to provide a balanced and impartial tribunal. No person who initiates the charges to be heard or who is a witness in the case may be a member of the committee to which the case is referred. The superintendent should designate one member to serve as chairman. The appointments and designations should be made subject to the approval of the area administrator.
- (2) The chairman of a unit disciplinary committee to which a case has been referred should arrange for a hearing on the charge within 48 hours after the referral. The accused should be brought before the committee and confronted with the facts established by investigation reports which tend to support the charge against him. The accused should be permitted to assert a defense or otherwise explain his conduct. The chairman may summon to testify any witnesses or other persons with relevant knowledge of the incident, and may allow the accused to question any person so summoned.
- (3) If guilt is established by substantial evidence, the unit disciplinary committee may impose one or more measures authorized as a disposition for minor offenses. The committee may suspend such imposition on condition of good behavior for a stated period of time not to exceed three months. Its decision should be noted in the record and certified by the chairman.

(b) Area Disciplinary Committee

- (1) Each area administrator should appoint one or more area disciplinary committees from personnel within his command if a balanced and impartial tribunal can be provided in this manner. There should be not less than three nor more than five members. When the offense occurred at a unit, no person who initiates the charges to be heard, or who is a witness in the case, or who is on the staff of the unit to which the accused is assigned may be a member of the area disciplinary committee to which the case is referred. When the offense occurred at a major institution, no person who initiates the charges, or who is a witness in the case, or who is in a position of direct supervision over the accused may be a member of the area disciplinary com-

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mittee to which the case is referred. The Director of Prisons should provide that such hearings be held by a disciplinary committee appointed by the Institution Head or his designated representative. The area administrator/institution head should designate one member to serve as a chairman.

- (2) Cases referred to an area disciplinary committee should be scheduled for a hearing within fourteen days of the referral. The accused should receive not less than 72 hours prior to the hearing, written notice of the charges against him, unless such 72 hour notice be waived in writing by the accused. If a delay for any other reason is desired by the unit superintendent or his designated representative or the accused, the one desiring the delay should state his reason in a written request to the area administrator who may grant such a delay for good cause.
- (3) The unit superintendent should insure that the investigation report, all written statements and any other pertinent items of information or evidence are properly compiled for presentation to the committee, and that the accused and all needed witnesses are available at the time and place of the hearing.
- (4) The chairman of the disciplinary committee should document reasons for declining to call requested witnesses and declining to present items of physical evidence on the DC-138. The factors that the chairman may consider when ruling on an inmate's request to call witnesses or present items of physical evidence should include but not be limited to:
 - (A) Relevance;
 - (B) Cumulative Testimony;
 - (C) Necessity; and
 - (D) Hazards presented by an individual case.
- (5) The unit superintendent may appoint a member of his staff to present the case to the area disciplinary committee. The accused may request that a particular member of his unit's staff be appointed to assist him. The unit superintendent should allow this request unless the accused requests one of his accusers or other inappropriate person, in which event the superintendent should appoint another staff member. The chosen or appointed representative should assist the accused both in preparing for the hearing and at the hearing. The staff assistant does not serve as an advocate. His role is only to assure that the inmate has an opportunity to present his version of the facts. The representative should document on a DC-138B the way in which he assisted the accused either before or during the hearing.
- (6) If the chosen or appointed representative has prior knowledge that the accused is guilty, he should inform the accused of that fact so that another staff member may be chosen if desired. Still, an appointed or chosen staff member can and should aid the accused in gathering and presenting evidence, even though he thinks that the accused is probably guilty.
- (7) The chairman of the area disciplinary committee should begin the hearing by reading the charges to the accused and asking him whether he admits to committing the offense. If the accused denies guilty, the evidence bearing on this issue should be presented. The accused should be given an opportunity to refute or explain evidence against him and to present evidence and make a statement in his own behalf. Witnesses presenting relevant testimony on his behalf may testify in person or by telephone. Whenever the presentation of live testimony or physical evidence would jeopardize or threaten institutional or individual security, written statements of the facts of the incident gathered by the investigating officer may be used. Written statements of the adverse witnesses, including the accuser, may be used. The inmate should not be permitted to cross-examine witnesses. If the chairman deems it necessary to withhold the identity of the primary accuser or any other witness due to the threat of reprisal, the accused should be informed of the part of testimony or statement of the accused which can be revealed without disclosing his identity.
- (8) After all evidence relating to guilt or innocence has been presented, the chairman will have the room cleared of all persons who are not voting members of the committee, except uninvolved people permitted to observe committee deliberations for educational or training purposes. If the committee does not feel that a proper decision can be reached on the basis of the information at its disposal, the chairman may reopen the hearing for additional questioning, postpone the hearing for one week in an attempt to obtain additional information, or dismiss the charges.
- (9) Upon reaching a decision as to the guilt or innocence by majority vote, the chairman should enter the committee's findings and rationale on the record and reopen the hearing to advise the inmate of the decision. If he has been found guilty or if he admits guilt when the charges are read, the committee should hear any matter pertinent to the issue of proper disposition and then close the hearing for deliberation on this issue. Upon reaching a decision by majority vote as

to the disposition and having noted the reasons for this determination on the record, the chairman should reopen the hearing to advise the inmate of the decision, inform him of the fact that it will be reviewed, and permit him to have entered on the record any objections he may have to the decision. The chairman should explain to the inmate that if he voices an objection, any punitive aspect of the decision will not take effect until the case is reviewed and the punishment is approved by the reviewing authority, while if no objection is made the decision will take effect immediately but be subject to being overturned or amended by the reviewing authority.

- (10) If the accused admits guilt or if he is found guilty of a minor offense by the area disciplinary committee, the committee may impose one or more of the measures authorized for minor offenses. If he admits guilt or if he is found guilty of a major offense by the area disciplinary committee, the committee may impose one or more of the measures authorized for minor offenses and in addition or in lieu thereof one or more of the measures authorized for major offenses. The committee may suspend such imposition on specified conditions for a stated period of time not to exceed six months. When an inmate is found guilty of possessing funds in a form other than that authorized by Division of Prisons policies or in excess of the authorized amount, the chairman should make a separate ruling that the unauthorized funds should be permanently confiscated and placed in the Welfare Fund.
- (11) The chairman of the committee should be responsible for insuring that all forms are properly completed. The inmate should be entitled to a copy of a written statement of the evidence relied on by the committee and the reasons for the disciplinary action. Certain items of evidence may be excluded if necessary to protect a witness or informant from reprisal. When information supplied by confidential informants is relied upon, the chairman should document in the record the reasons why the information provided was trustworthy or that the informant has provided reliable information in the past. Copies of Forms DC-138 and DC-138(c) should be forwarded to combined records and placed in the inmate's headquarter jacket. The originals of these forms will be placed in the inmate's field jacket.

History Note: Statutory Authority G.S. 148-11;

Eff. February 1, 1976;

Amended Eff. November 1, 1991; December 1, 1986; June 1, 1984.

.0204 REVIEW PROCEDURES

(a) A review of all actions by disciplinary committees should be made by the appointed authorities within seven days of the committee's decision.

(b) The review should be directed to the consideration of whether the record indicates that the proper procedures were followed during the course of the investigation and hearing, and whether the inmate received a substantively full and fair hearing. The reviewing authority should not substitute his judgment for that of the committee's unless it is necessary to do so in order to correct a prejudicial abuse of procedures or to remedy a clearly erroneous and unfair decision.

(c) The reviewing authority is authorized to:

- (1) approve the committee's decision;
- (2) order a re-hearing in whole or in part;
- (3) disapprove the committee's decision and dismiss the case;
- (4) reduce, but not increase, any punitive aspect of the committee's decision;
- (5) modify any administrative or treatment decision made by the committee.

(d) The reviewing authority will enter on the record his reasons for taking any action other than approving the committee's decision.

(e) The unit and the inmate concerned should be notified of the reviewing authority's decision without delay.

(f) The full record of the case will be filed at the location of the reviewing authority.

(g) The decision of the reviewing authority may be appealed in writing directly to the Director of Prisons or his designee. His decision is not subject to further review.

History Note: Statutory Authority G.S. 148-11;

Eff. February 1, 1976;

Amended Eff. November 1, 1991.

.0205 AUTHORIZED DISCIPLINARY PROCEDURES

(a) For minor offenses arising out of a single incident, one or more of the following are authorized:

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- (1) reprimand;
 - (2) suspension of one or more privileges for a period not to exceed 30 days. No privileges may be suspended which the facility superintendent cannot on his or her own authority grant, such as work release. Privileges which may be suspended include, but are not limited to, access to the movies, telephone, yard privileges, and recreational activities. Visitation privileges may be suspended when a disciplinary offense occurred during visitation;
 - (3) extra duties; The total hours of extra duty should not exceed 40 and no more than four hours should be performed on any working day and no more than eight hours on other days. The total period over which the extra duty extends should not exceed 30 days.
- (b) For major offenses arising out of a single incident one or more of the measures authorized for minor offenses may also be imposed and in addition or in lieu thereof one or more of the following:
- (1) confinement in disciplinary segregation for a period of 1 to 30 days. If the disciplinary committee imposes a maximum and minimum term of confinement, the Superintendent/Institution Head will have the discretion to release the inmate at any time within and including the minimum and maximum term. The inmate will receive day-for-day credit for time spent on administrative segregation pending a disciplinary hearing towards his total period of confinement in disciplinary segregation;
 - (2) loss of up to 30 days time earned by previous good conduct;
 - (3) loss of any or all minimum custody privileges (work release, study release, home leave, community volunteer leave, and all authorized outside activities) or loss of minimum custody status; Only the area disciplinary committee may make punitive level adjustments. The appropriate review date of level adjustment may be determined by the area classification committee according to the inmate's behavior following the infraction. If the inmate is to be demoted out of minimum custody, he will be referred to an area classification committee for reassignment in accordance with departmental procedures.
- (c) For each unrelated offense charged on the same hearing day, additional punishment may be imposed in accordance with these Rules.
- (d) Inmates who commit infractions on segregation may be confined in disciplinary segregation for additional periods of 1 to 30 days.

*History Note: Statutory Authority G.S. 148-11;
Eff. February 1, 1976;
Amended Eff. November 1, 1991; December 1, 1990; July 1, 1984; June 1, 1984.*

.0206 MODIFICATIONS

The Director of the Division of Prisons may authorize modifications of this procedure consistent with its fundamental principles, provided any modification should be in writing, approved by the Secretary of Correction, and incorporated in the policies and procedures of the Department.

*History Note: Statutory Authority G.S. 148-11;
Eff. February 1, 1976;
Amended Eff. November 1, 1991; June 1, 1984.*

SUBCHAPTER 2C - CLASSIFICATION

SECTION .0500 - PROMOTION OF FELONS TO MINIMUM CUSTODY

.0504 PROCEDURE

Each time the unit/institution classification committee formally reviews a case, a recommendation will be made. Form DC-121 will be completed and referred to the superintendent for review and approval or disapproval. After the final approving authority has acted on the case (whether approved or disapproved), proper distribution of all copies will be made (combined records, area records, unit or institution records).

*History Note: Statutory Authority G.S. 148-4; 148-11;
Eff. February 1, 1976;
Amended Eff. November 1, 1991.*

SUBCHAPTER 2D - PUBLIC COMMUNICATIONS

SECTION .0300 - INMATE USE OF THE MAILS

- .0301 GENERAL
- .0302 CORRESPONDENCE
- .0303 PROCEDURES FOR CENSORSHIP
- .0304 PACKAGES AND OTHER ITEMS
- .0305 MAIL RECORDS

*History Note: Filed as a Temporary Amendment Eff. February 1, 1988
For a Period of 30 days to Expire on March 1, 1988;
Statutory Authority G.S. 148-11;
Eff. February 1, 1976;
Amended Eff. March 1, 1988; January 1, 1985; March 1, 1984; February 1, 1984;
Repealed Eff. November 1, 1991.*

.0306 GENERAL

(a) Inmates may write to anyone, but an individual inmate's privileges to write to a particular person or persons may be withdrawn by the superintendent/warden of the correctional facility to which the inmate is assigned, upon request of the recipient, or if the recipient is a minor, at the request of his or her parents or legal guardian. Writing privileges also may be terminated for any of the reasons stated in Rule .0307(c) of this Section. The reason for withdrawal must be stated in a written notice to the inmate that should refer specifically to the letters previously returned.

(b) It is the purpose of the mail policy to protect citizens in the community from offensive or threatening letters and prevent criminal activities and escape plots from developing through correspondence. To accomplish this, it is the responsibility of each facility mail room to stamp the outside of each piece of outgoing inmate mail (including packages) with the name of the correctional facility, (ex., Mailed from Columbus Correctional Center). The stamp should be affixed to the front of the envelope above the address and between the return address and the postage stamp. This is not required at community residential facilities, i.e., Wilmington Residential Facility for Women.

(c) The superintendent/warden will be responsible for developing and implementing facility mail procedures consistent with this policy. The facility procedures must be reviewed annually to assure compliance with current Division of Prisons policy.

*History Note: Statutory Authority G.S. 148-11;
Eff. November 1, 1991.*

.0307 CORRESPONDENCE

(a) Legal Mail.

- (1) Definition: Mail to or from attorneys, state and federal courts, the judiciary, the Industrial Commission, or legal aid services and Para-legals.
- (2) Legal mail from inmates shall not be opened for inspection or impeded in its transmission. If there is any question as to whether an addressee is one of these persons, the mail can be held for not more than 24 hours to resolve the question.
- (3) Postage for legal mail from inmates will be paid from the Operating Fund provided the inmate is indigent. No other eligibility requirements apply to postage for legal mail. The 10 letter limitation on personal mail does not apply to legal mail.

(b) Department of Correction Officials.

- (1) Definition: The Secretary of Correction, the Director of Prisons, any member of the Grievance Resolution Board or its staff, any member of the Board of Correction, the Parole Commission or its staff, or any official of the Department of Correction in the chain of command above the superintendent/warden to which the inmate is assigned, are defined as DOC officials.
- (2) Mail to DOC officials will be accepted within our system without postage.
- (3) Mail to DOC officials shall not be opened for inspection or impeded in its transmission. If there is any question as to whether an addressee is one of these persons, the mail can be held for not more than 24 hours to resolve the question.

(c) Other Government Officials.

- (1) Definition: Any member of the Congress of the United States or any member of the General Assembly of North Carolina; the President of the United States or the Governor of North

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Carolina; the Attorney General of the United States or the Attorney General of North Carolina; the Director or any agent of the Federal Bureau of Investigation are defined as other government officials.

- (2) Mail to other government officials will be considered as personal mail for the purpose of postage.
- (3) Mail to other government officials shall not be opened for inspection or impeded in its transmission. If there is any question as to whether an addressee is one of these persons, the mail can be held for not more than 24 hours to resolve the question.
- (d) Personal Mail.
 - (1) Definition: Any mail to or from an inmate that is not defined in Paragraphs (a), (b), or (c) of this Rule.
 - (2) Postage for personal mail from inmates without funds will be paid from the Operating Fund provided the inmate is indigent.
 - (3) Postage for personal mail from indigent inmates shall be limited to the cost of 10 first-class one ounce letters per month per indigent inmate.
- (e) Other Outgoing Mail. Personal mail from inmates may be sealed when placed in the outgoing mail and shall not be opened and censored unless the superintendent/warden or his designee has good cause to believe that:
 - (1) The mail contains threats of physical harm against any person or threats of criminal activity.
 - (2) The mail threatens blackmail or extortion.
 - (3) The mail concerns sending contraband in and out of the correctional facility.
 - (4) The mail concerns plans to escape.
 - (5) The mail concerns plans to violate departmental rules and policies necessary to maintain security and control.
 - (6) The mail concerns plans for criminal activity or violation of state or federal laws.
 - (7) The mail concerns information which if communicated would create a clear and present danger of violence and physical harm.
- (f) Incoming Mail.
 - (1) Inspection: The superintendent/warden shall provide for the inspection of all incoming mail by qualified members of the correctional facility. The inspection shall serve to prevent inmates from receiving through the mail contraband or any other material that threatens to undermine the security and order of the facility or which cannot be lawfully sent through the mail. Mail to inmates which appears to be from one of the persons listed in Paragraphs (a), (b), or (c) of this Rule, shall be opened by correctional staff, who shall see that the contents are free of contraband and are in fact official or legal correspondence from the person whose name and return address appears on the outside of the envelope or package. The correspondence shall not be read beyond what is necessary to make this determination.
 - (2) Censorship: Incoming personal mail may be opened and read by the superintendent/warden or his designee only if he has reason to believe that the contents of the letter fall into one of the categories listed in Paragraph (e) of this Rule. This Paragraph and Paragraph (e) of this Rule allow for inspection and censorship of mail only when necessary to protect the security of the facility and prevent criminal activity. No letter is to be opened or censored in order to eliminate critical opinions of Departmental policy or the Department's employees. All incoming personal mail is to be inspected but not read unless it falls in one of the categories listed in Paragraph (e) of this Rule. Under normal circumstances, incoming mail should not be read.
- (g) Mass Mailing. Any massive attempt to use the mails to reach the inmate population or facility is inherently suspect. If the superintendent/warden has good cause to believe that such an attempt has been initiated in order to cause disruption or otherwise threaten the order and security of the facility, the mail involved will be censored. If necessary, due to the security consideration stated in this Paragraph, the superintendent/warden may refuse delivery of this mail without notice to the inmate addressee.
- (h) Rules on Letter Content and Structure.
 - (1) Letters to and from inmates must be written in English unless an exception to this requirement is made by the superintendent/warden.
 - (2) Letters may be typewritten, printed, or written legibly in longhand.
 - (3) Letters to inmates should be addressed so that the full name of the inmate appears on the envelope. The inmate shall instruct his correspondents to use the correct address as posted on the inmate's bulletin board.
 - (4) Letters from inmates must have their full name and return address of the facility in the upper left corner of the envelope.

*History Note: Statutory Authority G.S. 148-11;
Eff. November 1, 1991.*

.0308 PROCEDURES FOR CENSORSHIP

If the superintendent/warden or designee decides that an inmate should be prohibited from sending or receiving any personal mail, the inmate should be notified in writing within 24 hours of the reason for censorship. The inmate shall be afforded the opportunity to appeal the decision in writing, within seven days, directly to the Director of the Division of Prisons. The Director of Prisons or designee shall have the authority to reverse the prior decision if it is believed there is insufficient cause for the prohibition. The Director must take action on the appeal in seven days from the time the inmate's appeal is received.

*History Note: Statutory Authority G.S. 148-11;
Eff. November 1, 1991.*

.0309 PACKAGES AND OTHER ITEMS

(a) Sent by Inmates. Packages and large envelopes addressed to persons other than one of those listed in Rule .0307(a), (b), or (c) of this Section, may not be sealed for mailing by an inmate until inspected by a correctional officer and found free of contraband or material which constitutes a threat to the order and security of the facility or which cannot be lawfully sent through the mail. This inspection shall be done in the presence of the inmate. If cleared for mailing, the item shall be sealed and placed in the mail by the sender in the presence of the inspector.

(b) Sent to Inmates. Additional items sent to inmates shall be subject to inspection and handling by a correctional officer. The inspection shall be done in a secure location in the facility and shall not be done in the presence of the inmate. If the officer determines that the package or envelope contains contraband or other material that threatens the order and security of the facility, this material shall be confiscated.

(c) Additional Items Sent to Inmates. In addition to letters, the following items may be received by an inmate through the mail, and are always subject to inspection and handling as provided in these Regulations:

- (1) clothing approved for use while incarcerated;
- (2) clothing to be used upon release (if received within 15 days of a scheduled release date);
- (3) musical instruments (when approval is secured in advance from the superintendent/warden);
- (4) unframed photographs, not to exceed 8" x 10";
- (5) legal papers;
- (6) publications which may be received under 5 NCAC 2D .0100;
- (7) religious items;
- (8) money shall be sent by postal or bank money order or cashiers or certified checks. Cash sent by mail shall be returned to the sender with an explanation of the requirements for money orders and/or certified checks. Cash that is concealed or hidden within other mailed items in an attempt to avoid detection shall prompt an investigation and appropriate disciplinary action. Such cash will be confiscated if the inmate is found guilty of a disciplinary offense. Otherwise, it will be returned to the sender. If no return address is provided, cash received will be confiscated as contraband and deposited in the Inmate Welfare Fund.

(d) Inmate Request for Other Items. Any inmate may request in writing permission from the Command Manager to receive through the mail a specific item that is not otherwise authorized. This request shall be forwarded through the chain of command to permit the views of area staff to be expressed. Seasonal exceptions may be authorized by the Director of Prisons in addition to the list of items an inmate may receive through the mail.

(e) COD Packages Sent to Inmates. No COD packages shall be accepted for any inmate and no inmate shall be authorized to send mail COD. Unauthorized items arriving by mail shall be returned to the sender at the expense of the inmate addressed. If the inmate is without funds, the package shall be returned at the state's expense or the inmate may donate it to a charitable organization or request it to be destroyed. A copy of the mail regulations shall be enclosed in the package to be returned. Packages that postal authorities will not accept for return to the sender shall be delivered to some charitable organization, or to a law enforcement agency in appropriate cases, and a receipt shall be obtained for the same.

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*History Note: Statutory Authority G.S. 148-11;
Eff. November 1, 1991.*

.0310 MAIL RECORDS

The mail officer shall keep a record on Form DC-218 showing the source and destination of all legal mail, packages and items of monetary value mailed by an inmate. Check and money order numbers shall also be recorded on Form DC-218. The mail officer opening packages and items of monetary value mailed by or to an inmate shall sign his name at the beginning of each day's entries and place his initials beside each entry. The mail officer distributing such mail to inmates shall sign his name at the beginning of each day's entries and place his initials beside the signature of each inmate receiving such mail.

*History Note: Statutory Authority G.S. 148-11;
Eff. November 1, 1991.*

SUBCHAPTER 2E - TREATMENT

SECTION .0200 - HEALTH CARE POLICY

.0202 FACILITY RESPONSIBILITY

.0203 STAFF RESPONSIBILITY

.0204 CLINICAL RESPONSIBILITY

*History Note: Statutory Authority G.S. 148-11; 148-19;
Eff. February 1, 1976;
Amended Eff. September 23, 1980;
Repealed Eff. November 1, 1991.*

.0205 MEETINGS AND REPORTS

.0206 ANNUAL REVIEW

.0207 SKILLED NURSING FACILITIES

.0208 FACILITIES: EQUIPMENT: AND SUPPLIES

.0209 FIRST AID KITS

*History Note: Statutory Authority G.S. 148-11; 148-19;
Eff. September 23, 1980;
Amended Eff. February 1, 1983;
Repealed Eff. November 1, 1991.*

.0211 EMERGENCY SERVICES

.0212 SPECIALTY CARE

.0213 MENTAL HEALTH

.0214 PROFESSIONAL LICENSURE

.0215 NURSING SERVICES

.0216 TRAINING OF HEALTH CARE STAFF

.0217 TRAINING OF CORRECTIONAL STAFF

.0218 STANDING ORDERS AND PROTOCOLS

.0219 USE OF STUDENTS AND INTERNS

.0220 USE OF INMATES IN HEALTH CARE

*History Note: Statutory Authority G.S. 148-11; 148-19;
Eff. September 23, 1980;
Amended Eff. March 31, 1981; December 15, 1980;
Repealed Eff. November 1, 1991.*

.0222 INTAKE PHYSICAL EXAMINATION

*History Note: Statutory Authority G.S. 148-11; 148-19;
Eff. September 23, 1980;*

Repealed Eff. November 1, 1991.

.0224 MENTALLY DISTURBED INMATES
.0225 CONTINUITY OF CARE

*History Note: Statutory Authority G.S. 148-11; 148-19;
Eff. September 23, 1980;
Repealed Eff. November 1, 1991.*

.0230 SPECIAL HEALTH PROBLEMS
.0231 DETOXIFICATION
.0232 PROSTHETICS
.0233 TRANSFERS FOR TREATMENT

*History Note: Statutory Authority G.S. 148-11; 148-19;
Eff. September 23, 1980;
Repealed Eff. November 1, 1991.*

.0236 INFORMED CONSENT
.0237 NOTIFICATION IN CASE OF ILLNESS: INJURY OR DEATH
.0238 PROCEDURES IN CASE OF DEATH
.0239 PHARMACEUTICALS
.0240 HEALTH RECORDS

*History Note: Statutory Authority G.S. 148-11; 148-19;
Eff. September 23, 1980;
Repealed Eff. November 1, 1991.*

SECTION .0700 - WORK RELEASE

.0703 WORK RELEASE CONDITIONS

The following specific requirements must be met in order to grant work release for each eligibility category listed in Rule .0702:

- (1) Misdemeanants court ordered for work release.
 - (a) The commitment or court order from the sentencing court should provide:
 - (i) The date work release is to begin;
 - (ii) The prison or local confinement facility to which the offender is to be committed;
 - (iii) A provision that work release terminates the date the offender loses his job or violates the conditions of the work release program established by the Department of Correction; and
 - (iv) A determination as to whether the earnings of the offender are to be disbursed by the Department of Correction or by the clerk of the sentencing court in the manner that the court in its order directs.
 - (b) A misdemeanor court ordered for work release will be housed at the prison facility specified by the court. However, if the facility specified cannot house work release inmates due to overcrowding or other administrative purposes, inmates can be assigned to some other appropriate prison facility. For the purposes of this Rule, "overcrowding" refers to a population count above the designated capacity for the facility. "Administrative purposes" are defined as management practices which determine the classification, custody, programs and security at each unit.
 - (c) The inmate must not be awaiting trial on felony charges or have any felony detainers pending.
 - (d) The inmate will be in minimum custody level III by the date work release is ordered to begin.
 - (e) A misdemeanor court ordered for work release will be processed as outlined in Rule .0706(a).
 - (f) If court ordered work release is delayed or disapproved, the classification authority will document the reasons for such action on the DC-121. The inmate should be notified by a letter which shall set forth the reasons for the delay or denial.

- (g) If an inmate who is court ordered for work release and has suitable employment is disapproved, the Area Administrator/Institution Head or his designee will notify the sentencing judge by letter noting the reasons for disapproval.
- (2) Inmates sentenced to a total sentence length of five years or less who are court recommended for work release and therefore requiring immediate work release placement.
 - (a) The inmate must not be awaiting trial on felony charges or have any felony detainers.
 - (b) The inmate must have suitable employment at the time of commitment in an area where there is a field unit or other facility suitable for housing the inmate.
 - (i) "Suitable employment" shall require that:
 - (A) The employer must pay at least the current minimum wage;
 - (B) The employer must participate in an insurance program, preferably the Worker's Compensation Program, which will compensate the inmate for injury by accident arising out of and in the course of employment;
 - (C) The work setting must provide an appropriately supervised environment. Employment by a family member is prohibited. A family member is defined as father, mother, brother, sister, husband, wife, child, aunt, uncle, grandparents, in-laws, foster parent or other persons who acted in place of parents where such relationship can be verified.
 - (D) Inmates disciplined by a regulatory body established by laws for conduct related to their work will not be placed in the same or similar work without consultation with the regulatory body and prior approval of the Secretary of Correction.
 - (ii) The processing diagnostic center will confirm the job offer. Verbal verification will be followed up with a letter of confirmation except with a regular work release employer. The processing diagnostic center will notify the proposed unit of housing for work release directly by telephone and will request an investigation of the work release job plan. Information concerning the inmate, the crime, the job plan particulars, and the other information as appropriate will be provided. The receiving unit will conduct the job investigation and will provide return notification to the referring diagnostic center by telephone within three working days. Diagnostic center staff will send a notification to the receiving area via a DCI terminal transmission stating a request for an investigation has been made.
 - (iii) If a suitable facility is not within normal commuting distance of the inmate's employment, a contract may be negotiated with the county sheriff for housing the inmate at a local confinement facility.
 - (iv) If suitable employment is not available at the time of the commitment, all other provisions in this Subsection do not apply until such employment is secured. The following procedure shall be followed:
 - (A) The staff of the diagnostic center shall counsel and assist the inmate in his job search. The assistance shall include contacts with prospective employers on behalf of the inmate.
 - (B) If suitable employment is not secured at the completion of the regular diagnostic process, the inmate shall be assigned to an appropriate field unit by the classification authority. The assignment should be made to facilitate the inmate's search for employment. The classification authority should consider promoting the inmate to minimum custody level III for work release only if otherwise eligible to further facilitate work release development and placement. The following is a suggested priority list of assignment locations.
 - (I) An appropriate unit close to the inmate's home;
 - (II) An appropriate unit within commuting distance of a promising job market;
 - (III) An appropriate unit which is a reasonable compromise of the above priorities.
 - (C) The program staff of inmate's field unit shall counsel and assist the inmate in his job search. The assistance shall include contacts with prospective employers. While seeking work release employment, the inmate may be given any appropriate duty assignment by the classification authority but the duty assignment shall not impair the inmate's opportunity for work release. When suitable employment is obtained, the inmate shall immediately be processed in accordance with this Subsection.
- (c) The following custodial and correctional considerations, as defined in (i) of this Rule, will preclude the inmate's participation in the work release program.
 - (i) Even though an inmate is court recommended for work release, the inmate may be denied work release privileges by the classification authority under the following conditions:
 - (A) The inmate has a prior criminal or prison record of escape or assaultive behavior which would normally result in the denial of work release privileges to an inmate who had not been recommended by the court;

- (B) The inmate has committed infractions subsequent to commitment under the sentence recommending work release which would normally result in the denial of work release privileges to an inmate who had not been recommended by the court;
- (C) The inmate has a serious health problem, mental or physical, which warrants immediate treatment or observation on a continuing basis. This problem shall be fully documented on the DC-121R; or
- (D) The inmate has committed major rule violations during a previous term of confinement during work release participation of sufficient magnitude to give cause for current program disapproval.
- (ii) If there is reason to believe that an inmate is subject to denial of work release privileges, his placement on the work release program may be temporarily delayed by the classification authority pending further study of his case and the final decision of the classification authority.
- (iii) If court recommended work release is delayed or disapproved, the classification authority will document the reasons for such action on the DC-121. The inmate should be notified by a letter which shall set forth the reasons for the delay or denial.
- (iv) If an inmate who is court recommended for work release and has suitable employment is disapproved pursuant to the conditions of Rule .0703(2)(c)(i)(A) through (D), the Area Administrator/Institution Head or his designee will notify the sentencing judge by letter noting the reasons for disapproval.
- (d) Subject to the considerations set forth in Rule .0703(2)(c), all inmates with court recommendations for work release are immediately to be placed in a minimum custody level III, for the purpose of work release only. The inmate will not have any other community privileges unless approved as provided in the existing policy relating to outside activities (5 NCAC 2F .0600).
- (e) Transfer to the appropriate field unit will be processed by the classification authority. Court ordered, recommended inmates approved for work release shall receive first priority for housing assignments and transfers. A priority list shall be established within each area. Court recommended and approved inmates shall receive the top priority based on the length of time in the prison system. The remainder of the list shall be composed of other inmates approved for work release in order of length of time since receipt of approval.
- (f) Inmates with a court recommendation for work release should be processed, transferred and placed on work release within ten working days of admission unless custodial and correctional considerations clearly preclude such an assignment or a work release facility is unavailable in the area of proposed employment.
- (g) A court recommendation which states work release is recommended or which states immediate work release is recommended will be interpreted as requiring immediate work release placement.
- (3) Inmates sentenced for crimes committed after July 1, 1981, who are not court recommended for work release.
 - (a) Inmates serving sentences totaling five years or less are eligible for immediate work release consideration. Those sentenced to greater than five years must be within three years of the maximum release date or parole eligibility date except as approved by the Director of Prisons.
 - (b) The inmate must not be awaiting trial on felony charges or have any felony detainers pending.
 - (c) Suitable employment as defined in Rule .0703(2)(b)(i) must be available prior to work release placement but approval for the work release program can be granted before an employment plan is developed.
 - (d) If a suitable facility is not within normal commuting distance of the inmate's employment, a contract may be negotiated with the county sheriff for housing the inmate at a local confinement facility.
 - (e) The inmate must be in minimum custody level III by the date work release is to begin.
 - (f) The inmate must not have had either an escape within six months or a major infraction within three months of work release approval.
- (4) Inmates sentenced for crimes committed prior to July 1, 1981, with sentences greater than five years.
 - (a) The inmate must be within three years of the maximum release date or parole eligibility date, except as approved by the Director of Prisons.
 - (b) The inmate must have approval of the Parole Commission. For those inmates on approved MAPP Agreements with a total sentence length of less than 30 years, the MAPP Agreement represents work release approval by the Parole Commission.
 - (c) The inmate must not be awaiting trial on felony charges or have any felony detainers pending.

FINAL RULES

- (d) Suitable employment, as defined in Rule .0703(2)(b)(i) will be required for placement and may be required for Parole Commission approval as stated in Rule .0707(f).
- (e) If a suitable facility is not within normal commuting distance of the inmate's employment, a contract may be negotiated with the county sheriff for housing the inmate in a local confinement facility.
- (f) The inmate must be in minimum custody level III status on the date he is to begin participating in work release. However, approval for work release may be requested through the Parole Commission prior to attaining minimum custody level III.
- (g) The inmate must not have had either an escape within six months or a major infraction within three months of work release approval.

*History Note: Statutory Authority G.S. 148-11; 148-33.1;
Eff. February 1, 1976;
Amended Eff. November 1, 1991; December 1, 1986; April 1, 1986; December 1, 1985.*

SECTION .1300 - STUDY RELEASE

.1304 APPLICATION PROCEDURE

.1305 REINSTATEMENT

*History Note: Statutory Authority G.S. 148-11; 148-13;
Eff. December 1, 1986;
Repealed Eff. November 1, 1991.*

.1307 CHANGE IN EDUCATION PLAN

.1308 PLACEMENT ON STUDY RELEASE

.1309 REMOVAL FROM OR COMPLETION OF STUDY RELEASE

*History Note: Statutory Authority G.S. 148-11; 148-13;
Eff. December 1, 1986;
Repealed Eff. November 1, 1991.*

SECTION .1500 - SAFETY AND HEALTH

.1501 PURPOSE

.1502 SUPERVISORY AND EMPLOYEE RESPONSIBILITY

.1503 CONTRACTING AGENCY RESPONSIBILITY

*History Note: Authority G.S. 95-129.1; 95-130.1; 95-148; 148-11; Executive Order Number 6;
Eff. October 1, 1989;
Amended Eff. October 1, 1990;
Repealed Eff. November 1, 1991.*

SUBCHAPTER 2F - CUSTODY AND SECURITY

SECTION .0100 - SEARCH AND SEIZURE

.0101 GENERAL

(a) In the searching of inmates, all correctional officers and staff are required to act reasonably and professionally and within reason, employ a "common sense approach". Every effort should be made to assure that inmates are not unnecessarily embarrassed or humiliated.

(b) The superintendent/warden will be responsible for developing and implementing a facility search and seizure procedure consistent with this policy. Facility procedures must be reviewed annually to assure compliance with the current policy of the Division of Prisons.

(c) To control contraband, searches of inmates are authorized at the discretion of staff. Refusal to submit to a search may result in a forced search and disciplinary action against the inmate.

*History Note: Statutory Authority G.S. 148-4; 148-11;
Eff. February 1, 1976;*

Amended Eff. November 1, 1991.

.0102 SEARCH

*History Note: Statutory Authority G.S. 14-258.1; 15A-404; 148-4; 148-11;
Eff. February 1, 1976;
Amended Eff. January 1, 1986; March 1, 1985;
Repealed Eff. November 1, 1991.*

.0103 SEARCHES OF INMATES

(a) Complete Searches. A complete search shall include a strip search (the removal of all of the inmate's clothing), a search of the inmate's effects, and a visual search of the inmate's body cavities to look for contraband. The following rules apply to complete searches:

- (1) Posts that routinely involve complete searches should be staffed by correctional officers of the same sex as the inmates under their supervision. Under normal operations, complete searches of inmates should be conducted by trained staff of the same sex as the inmate. During an emergency operation, the commander may order complete searches of inmates by Criminal Justice Certified staff regardless of sex.
- (2) The receiving facility will conduct a complete search on all inmates upon commitment to the Department of Correction, on return from escape or court, upon transfer from another facility, or placement on segregation (disciplinary, administrative, maximum custody, etc.).
- (3) All inmates entering or leaving maximum, close or medium security facilities will be completely searched.
- (4) Inmates classified as maximum custody will be completely searched before and after visiting. General population inmates in close or medium custody will be completely searched after visiting.
- (5) Minimum custody inmates assigned to facilities other than minimum security facilities will be completely searched after visiting.
- (6) Upon the discretion of the Superintendent or Officer-In-Charge and as indicated in the unit's Standard Operating Procedures, all or a random selection of minimum custody inmates will be searched daily upon the return from community based program activities. Such activities include but are not limited to Work Release, Study Release, Home Leave, Community Volunteer Leave, and Outside Work Assignments, etc.

(b) Routine Searches. Routine searches are pat and frisk searches with the person clothed. A routine search may also include searches of personal effects. The following rules apply to routine searches:

- (1) Correctional staff of either sex may conduct routine searches of male and female inmates.
- (2) Where complete searches are not required, routine searches of minimum custody inmates shall be conducted upon the inmates leaving and returning to the facility for authorized outside activities.
- (3) Where complete searches are not required before or after visiting, routine searches shall be conducted.

(c) Body Cavity Searches. Body cavity searches are the probing of body orifices in search of contraband. These searches are authorized by the superintendent/warden or his/her designee when there is probable cause to believe an inmate has concealed contraband in a body orifice. Body cavity searches are authorized only if a complete search has not produced the suspected concealed contraband. Body cavity searches shall be done by medical personnel of the Division of Prisons in a medical setting pursuant to procedures in the Health Care Procedures Manual. If medical personnel of the Division of Prisons are not available, the procedure may be done by outside medical providers. An Incident Report (DC-432) must be completed to document a body cavity search.

(d) Searches of Inmate's Quarters and Effects. Complete shakedown searches of inmate quarters and effects are authorized, regardless of whether there is reason to suspect any particular inmate of concealment of contraband. Searches of inmate quarters and effects are to be conducted randomly daily. Staff conducting the search should avoid any unnecessary scattering, disruption, or disarray of the inmate's personal possessions during the search. Inmate's living quarters may be searched without the inmate being present. Normally, inmates will be present when their locker is searched.

*History Note: Statutory Authority G.S. 14-258.1; 15A-404; 148-4; 148-11;
Eff. November 1, 1991.*

.0104 SEARCHES OF VISITORS AND OTHER PERSONS

(a) Before and after every visiting period within the confines of a facility, a search of the room or area where the visits are held will be made to assure that no contraband has been concealed in or under any structure, equipment or furniture.

(b) All visitors and all other persons who seek entry to any facility for any purpose may be subjected to a routine search of their person or their effects upon entering or leaving a facility or any time they are within the confines of a facility. Such searches are authorized at the discretion of the Officer-In-Charge. Appropriate documentation shall be made to the Superintendent.

(c) A routine search may also include the search of personal effects. Personal effects such as handbags, boxes, briefcases, or other items under the immediate control or access of the visitor, should remain outside the confines of the facility. When in the judgment of the Officer-In-Charge that it is necessary for any of these personal effects to be carried within the Institution, such personal effects will be subject to a thorough search. Visitors who refuse to agree to a search of personal effects will not be authorized to visit.

(d) Routine searches of visitors and other persons seeking entry to a facility must be conducted by an officer of the same sex as the visitor or other person seeking entry to a facility. Wherever possible, more than one staff person should be present for such searches. If an officer of the same sex as the visitor is not available to conduct the routine search, visitors suspected of carrying contraband on their person must be denied entry into the facility. When visitors are suspected of carrying contraband, the Officer-In-Charge is authorized to request the assistance of local law enforcement provided that such assistance results in a search of the visitor by an officer of the same sex.

(e) If contraband is found on the person or in the personal effects of the visitor, the contraband should be confiscated and local law enforcement authorities notified immediately. Reasonable efforts short of the Use of Force should be utilized to encourage the visitor to remain until local law enforcement authorities arrive. If the visitor refuses to remain, as much descriptive and informational data as can be accumulated by correctional staff regarding the identity of the visitor and direction of departure and method of departure, should be communicated to the local law enforcement officers.

(f) A visitor seeking entry to the facility can avoid a routine search by leaving the facility. If the visitor refuses to submit to a routine search, the visitor shall be denied access to the facility. The visitor should also be considered for exclusion from an inmate's approved visitor's list in accordance with 5 NCAC 2D .0201(d)(1).

(g) If prior to visitation, prison officials receive reliable information that a visitor will attempt to smuggle contraband into the facility, the Officer-In-Charge should contact the local law enforcement agency for assistance.

(h) Complete searches of visitors is solely the authority of local law enforcement authorities with the consent of the visitor or by local law enforcement authorities having the legal basis to conduct the search. While such searches may be conducted on agency property, Division staff should not provide assistance. Any assistance provided should be in response to a request from local law enforcement authorities and predicated upon the maintenance of order and security at the facility.

*History Note: Statutory Authority G.S. 14-258.1; 15A-404; 148-4; 148-11;
Eff. November 1, 1991.*

.0105 SEARCHES OF EMPLOYEES

(a) All employees of the Department of Correction may be subjected to a routine search of their person or their effects upon entering or leaving a facility or any time they are within the confines of a facility. Such searches are authorized at the discretion of the Officer-In-Charge. Appropriate documentation shall be made to the Superintendent.

(b) Routine searches of employees will be conducted as a result of individualized suspicion. Routine searches of employees must be conducted by an officer of the same sex as the employee. Whenever possible, more than one staff person should be present for such searches. If an officer of the same sex as the employee is not available to conduct the routine search, employees suspected of carrying contraband on their person must be denied entry into the secured area of the facility. An employee may be ordered to remain in a designated area until such time as an officer of the same sex or local law enforcement officer of the same sex is available.

(c) If the employee refuses to submit to a routine search or refuses to remain in the area as ordered, the employee shall be denied access to the facility. The employee shall be notified that the employee is considered to be on leave without pay and that appropriate disciplinary action will be initiated.

(d) A routine search may also include searches of personal effects carried on the person such as handbags, boxes, briefcases, and other items if the item is within the immediate control or access of the person being searched.

(e) Upon individualized suspicion and subject to approval by the Officer-In-Charge, employee offices may also be searched for contraband.

(f) Complete searches of employees will be conducted only after the issuance of a Search Warrant by the appropriate judicial official.

(g) Body cavity searches of employees will be conducted only after the issuance of a Search Warrant by the appropriate judicial official.

(h) Employee vehicles parked on Division property are subject to external inspections by Department staff and or Narcotic Detection Canines. Employee vehicles on Division property may be searched if consent is given by the employee, or a Search Warrant has been properly issued and is being served by a law enforcement agency, or under some other legal justification for a search as determined by local law enforcement officials.

*History Note: Statutory Authority G.S. 14-258.1; 15A-404; 148-4; 148-11;
Eff. November 1, 1991.*

.0106 COMPLETE FACILITY SEARCH

A complete search of each facility shall be conducted not less than once each six months.

*History Note: Statutory Authority G.S. 14-258.1; 15A-404; 148-4; 148-11;
Eff. November 1, 1991.*

.0107 DISPOSITION OF CONTRABAND

Disposition of contraband shall be in compliance with 5 NCAC 2F .0802(e) and G.S. 114-18.1.

*History Note: Statutory Authority G.S. 14-258.1; 15A-404; 148-4; 148-11;
Eff. November 1, 1991.*

SECTION .0500 - INMATE PERSONAL PROPERTY

.0501 GENERAL

(a) The provisions of this policy apply to all legally confined inmates of the Division of Prisons, except where security and custody precautions require additional provisions pertaining to particular institutions or to special inmate classifications. These additions must be specifically approved by the Director of Prisons.

(b) A partial list of personal items and clothes that inmates are authorized to possess appears in this Section. When an inmate arrives at a reception center, he will be informed that he will be allowed to keep these items but that the Division of Prisons assumes no responsibility for replacing any items if they are damaged, destroyed or lost. The amount of authorized items may be limited where necessary to provide for proper accountability, contraband control, storage space, sanitary conditions and resident morale.

*History Note: Statutory Authority G.S. 148-4; 148-11; 148-13;
Eff. February 1, 1976;
Amended Eff. November 1, 1991.*

.0502 PERSONAL CLOTHING

(a) Reception.

(1) Inmates with sentences of more than one year will be required to dispose of all items of personal clothing except shoes (maximum heel height one and one-half inches) and handkerchiefs, unless they are eligible for work release under G.S. 143-33.1(a), or safekeepers.

(2) Inmates with a maximum sentence of one year or less will be required to retain useable items of personal clothing which will be stored in a secure place so that they may be made available to them when they are promoted to minimum custody and or released.

(3) Inmates eligible for work release under G.S. 148-33.1(a) will be able to retain all items that other inmates so classified are allowed to retain.

(b) Clothing Authorization.

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- (1) Inmates classified in maximum, close, medium and minimum will not be allowed to possess any item of personal clothing except handkerchiefs and shoes as authorized by Policy and Procedures 5 NCAC 2F .0503(a)(13).
- (2) A maximum of 15 items of outer clothing will be permitted for those inmates participating in community based programs such as work release, study release, off-site community volunteer passes, home leaves and Pre-Release Training.
- (3) Inmates demoted to minimum I or below will be required to dispose of all personal clothing except shoes and handkerchiefs. Disposal will be the sending facility's responsibility.
- (4) The personal clothing of inmates removed from community based programs due to disciplinary, medical, administrative, etc., reasons may be:
 - (A) Retained by the inmate.
 - (B) Stored by the Division of Prisons.
 - (C) Disposed of by the inmate at the discretion of the Facility Head.
- (c) Facility Exceptions. Minimum custody facilities with authorized special missions can allow inmates to wear clothing other than prison issued clothing if approved by the appropriate Command Manager.

*History Note: Statutory Authority G.S. 148-4; 148-11; 148-13; 148-33.1(a);
Eff. February 1, 1976;
Amended Eff. November 1, 1991.*

.0503 AUTHORIZED ITEMS

(a) Subject to any additional provisions regarding the possession of personal property approved by the Director of the Division of Prisons under Rule .0501 of this Section, the following items are authorized to be retained by inmates during confinement:

- (1) books and periodicals (see publication policy -- 5 NCAC 2D .0100);
- (2) personal funds; No inmate will be allowed to have more than thirty dollars (\$30.00) in their possession at any time. All other funds must be deposited in trust fund accounts; No inmate will be allowed to possess currency in denominations greater than a five dollar (\$5.00) bill;
- (3) eyeglasses and nonmetallic cases;
- (4) religious items (medals, rosaries);
- (5) inexpensive jewelry and watches to include wedding bands and other jewelry at the owner's risk; The value of each item shall not exceed one hundred dollars (\$100.00);
- (6) inmates will be permitted to own/possess one battery operated transistor radio, "walk-man" style, with earphones and AM/FM bands. Radios will be no larger than 5" x 3" x 1". The radios will be sold exclusively through the facility canteens and the prices will be determined at a reasonable level and will be posted. Inmates may retain radios purchased prior to this revised policy as long as they are operational. The officer-in-charge may designate areas where radios may be used without earphones. The Division of Prisons will not be responsible for replacement due to loss, theft, or breakage. Each facility should keep a sufficient supply of these radios on hand for sale to the inmates with coordination through the Department of Correction Purchasing Section;
- (7) toothbrushes, shaving cream, safety razors and blades;
- (8) unframed photographs not to exceed 8" by 10";
- (9) canteen purchases including items bought at one unit of the prison system by an inmate subsequently transferred to another unit;
- (10) wallets, or pocketbooks;
- (11) Inmates will be permitted to retain items in accordance with Policy and Procedures 5 NCAC 2D .0304(c);
- (12) any drug, chemical compound or controlled substance which has been issued to an inmate by a proper authority except such items will not be permitted to accumulate beyond prescribed or authorized levels;
- (13) shoes - Inmates will be permitted to possess one pair of dress shoes; one pair of recreational shoes (tennis shoes); one pair of shower shoes (flip flops); and one pair of state-issued work shoes (steel toe brogans). Work shoes for inmates on work release may be state-issued or purchased by the inmate or state issued can exceed the overall height of nine inches from bottom of the heel to the top of the shoe. Heel height of any shoe cannot exceed one and one half inches.

* Exceptions may be issued by the Facility Head for medical or work release purposes only.

(b) Legal Papers. Inmates will be permitted to possess legal papers relevant to cases that are or may be pending before the courts and papers relating to legal transactions where possession is necessary for the proper handling of the matter. Other legal materials may be kept, but the amount of such material may be limited where necessary to maintain adequate sanitary conditions, storage space, and security. If there is doubt as to whether an inmate should be allowed to possess legal papers or material, the matter should be referred directly to the Director of Prisons or his representative who will consult legal authorities and make a decision in the matter. Where an inmate is not allowed to keep legal materials, they will be stored in a secure place at the facility. The inmate will be allowed access to specific materials that he requests if the request does not threaten security interests as enumerated in this Rule.

*History Note: Filed as a Temporary Amendment Eff. May 25, 1984, for a Period of 38 Days to Expire on July 1, 1984;
Filed as a Temporary Amendment Eff. August 24, 1983, for a Period of 38 Days to Expire on October 1, 1983;
Statutory Authority G.S. 148-4; 148-11; 148-13;
Eff. February 1, 1976;
Amended Eff. November 1, 1991; July 1, 1984; October 1, 1983; July 1, 1983.*

SECTION .0700 - TRANSFER BRANCH

- .0701 GENERAL
- .0702 APPLICATION
- .0703 PRECAUTIONS
- .0704 TRANSFER BRANCH PERSONNEL

*History Note: Statutory Authority G.S. 148-4; 148-11; 148-36;
Eff. July 1, 1976;
Amended Eff. March 31, 1981;
Repealed Eff. November 1, 1991.*

SECTION .0800 - CONTRABAND CONTROL

- .0801 DEFINITION
- .0802 CONTROLLED SUBSTANCES

*History Note: Filed as a Temporary Amendment Eff. July 22, 1983, for a Period of 41 Days, to Expire on September 1, 1983;
Statutory Authority G.S. 148-11; 148-13; 148-18.1;
Eff. July 1, 1976;
Amended Eff. September 1, 1983; November 1, 1976;
Repealed Eff. November 1, 1991.*

SECTION .0900 - TRACKING STATIONS

- .0901 GENERAL
- .0902 PERSONNEL AND EQUIPMENT
- .0903 SPECIAL ORDERS

*History Note: Statutory Authority G.S. 148-4; 148-11;
Eff. July 1, 1976;
Repealed Eff. November 1, 1991.*

SECTION .1000 - CONTROL OF INMATES

- .1001 CONTROL PROCEDURE
- .1002 RESPONSIBILITY

*History Note: Statutory Authority G.S. 148-4; 148-11;
Eff. July 1, 1976;*

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*Amended Eff. November 1, 1990;
Repealed Eff. November 1, 1991.*

SECTION .1100 - TRANSPORTING INMATES

.1101 GENERAL .1102 SECURITY

*History Note: Statutory Authority G.S. 148-4; 148-11;
Eff. July 1, 1976;
Repealed Eff. November 1, 1991.*

SECTION .1200 - INSPECTIONS

.1201 GENERAL .1202 INSPECTIONS

*History Note: Statutory Authority G.S. 148-4; 148-11;
Eff. July 1, 1976;
Repealed Eff. November 1, 1991.*

SECTION .1300 - CORRECTIONAL OFFICERS

.1301 GENERAL .1302 DUTIES OF CORRECTIONAL OFFICERS .1303 GENERAL ORDERS

*History Note: Statutory Authority G.S. 148-4; 148-11;
Eff. July 1, 1976;
Repealed Eff. November 1, 1991.*

SECTION .1400 - CUSTODIAL AGENTS

.1401 GENERAL .1402 OTHER STATE EMPLOYEES AS CUSTODIAL AGENTS

*History Note: Statutory Authority G.S. 148-4;
Eff. July 1, 1976;
Repealed Eff. November 1, 1991.*

SECTION .1500 - USE OF FORCE

.1501 GENERAL .1502 APPLICATION

*History Note: Statutory Authority G.S. 148-11; 148-46;
Eff. July 1, 1976;
Amended Eff. August 1, 1989; February 1, 1986;
Repealed Eff. November 1, 1991.*

.1503 PURPOSE

The purpose of this policy is to provide Division of Prisons' personnel direction in the use of non-deadly and deadly force, documentation requirements, and reporting procedures for use of force incidents.

*History Note: Statutory Authority G.S. 148-11; 148-46;
Eff. November 1, 1991.*

.1504 POLICY

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The following general guidelines apply to the use of force in the Division of Prisons.

- (1) The use of force shall be permissible only to the extent reasonably necessary for a proper correctional objective. Excessive force is prohibited but this prohibition shall not be construed to mean that staff must suffer an assault upon their person before taking appropriate defensive action or that the use of force by another must be met with strictly equal force on the part of the staff. The degree of force necessary to control the situation shall be determined in the context of the number of staff present, the type of resistance employed, the relative size and strength of the persons involved and similar criteria.
- (2) An officer is authorized to use whatever degree of force reasonably appears to be necessary to defend the officer or a third party from imminent assault. Reasonable force is authorized in order to prevent an escape or to ensure compliance with a lawful order or to protect property or to return an escapee to custody.
- (3) An officer may lawfully utilize deadly force to: prevent the escape of a convicted felon, prevent or stop a life threatening assault on themselves or another person, or to prevent escape of a pre-trial detainee awaiting felony charges. Deadly force may not be used solely to protect property or ensure compliance with a lawful order that does not implicate personal safety.
- (4) An officer is prohibited from using force solely as a result of verbal provocation, however extreme. An officer shall not strike or attempt to strike an inmate who has abandoned his resistance or who is effectively restrained. The use of force as punishment is strictly prohibited.
- (5) When employing any degree of force, the officer shall use reasonable care to ensure that innocent parties are not endangered by such use of force.
- (6) The long and short batons are the only individual impact devices authorized for duty. Each facility will designate the posts approved to routinely be issued batons. However, in extreme circumstances staff are expected to use any means available to protect themselves from assault and injury.
- (7) Firearms will be limited to those approved by the Director of Prisons. Personal weapons are prohibited. All weapons must be the property of the Division of Prisons.
- (8) If an inmate complains of a use of force in a grievance and a Use of Force Report was not completed, the Officer-In-Charge will investigate. The investigation should begin with a medical examination as soon as possible. If the Officer-In-Charge determines that a Use of Force Report should have been completed, the responsible officer will be subject to disciplinary action.
- (9) When time and circumstances permit, a Sergeant or supervisor of higher rank will be present to supervise anticipated use of force or situations likely to result in use of force.
- (10) An officer should attempt non-forcible methods of inmate control, but only to the extent reasonably possible under the circumstances as they appear to that officer.
- (11) Application of force will depend on a determination by the Officer on the scene who will be guided by the facility's Standard Operating Procedures. Standard Operating Procedures shall be approved by the Area Complex Administrator or Institution Head and shall include the necessary procedures for implementing this policy.
- (12) This policy recognizes that use of force is more likely to occur in segregation/maximum custody facilities and, therefore, an officer will not be assigned to a single cell segregation cell block unless he has completed the basic training program or is in an on-the-job training capacity in a double posting with a trained officer or in emergency and life threatening situations.
- (13) Escapes.
 - (a) An escape is any individual attempting to leave the custody of the Division of Prisons without prior authorization.
 - (b) Deadly force is not authorized against a misdemeanor escapee or in the apprehension of a misdemeanor escapee, except when there is a clear and present danger of serious injury or loss of life to an employee or third party.
 - (c) Deadly force is not authorized against a pre-trial detainee escapee awaiting misdemeanor charges.
 - (d) Deadly force is authorized against a felon escapee.
 - (e) Deadly force is authorized against a pre-trial detainee awaiting felony charges.

*History Note: Statutory Authority G.S. 148-11; 148-46;
Eff. November 1, 1991.*

1505 PROCEDURES

- (a) Hands-on Physical Force.

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- (1) Hands-on physical force, including approved unarmed self defense techniques, is authorized to restrain or otherwise control an inmate when control through communication has failed.
- (2) Hands-on physical force may be used to defend the officer or a third party from imminent assault, or to prevent an escapee, or to protect property, or to ensure compliance with a lawful order or to return an escapee to custody.
- (b) Chemical Mace.
 - (1) Chemical mace may be used to the extent necessary to control or deter violent or aggressive acting inmates.
 - (2) An officer should attempt to avoid discharging mace into direct contact with an inmate's face.
 - (3) An inmate subjected to mace will be moved to a ventilated area and will be afforded an opportunity to shower and change clothes once control has been restored. An inmate's refusal of the opportunity to shower and change clothes shall be documented in the Use of Force Report.
- (c) Individual Control Devices (Long Baton, Short Baton).
 - (1) Individual control devices may be used to control violent or aggressive inmates.
 - (2) Intentional overhead strikes with a baton are prohibited unless deadly force is to defend himself or others from imminent serious personal injury or deadly peril.
- (d) Mechanical Restraints.
 - (1) Approved Division of Prisons' mechanical or physical restraints to immobilize an inmate, may be used to control inmates who have demonstrated behavior that presents a significant risk of injury to self or others. Interim steps such as hand-cuffs, wrist chains, and leg-cuffs may be used to attempt to control the inmate before immobilizing.
 - (2) The Officer-In-Charge may authorize the use of restraints to immobilize an inmate for up to four hours. If the inmate is immobilized with the use of restraints, the Officer-In-Charge should immediately notify the Area, Institution or Correctional Center Duty Officer, Psychological Services staff, and Medical staff.
 - (3) The Area/Complex Administrator, Institution Head, or designee may authorize immobilization of an inmate for up to 48-hours. Immobilization beyond four hours is not authorized except at prison locations which have 24-hour Health Care staffing and single cell facilities.
 - (4) Immobilization for longer than 48-hours shall require transfer to Central Prison, or to the North Carolina Correctional Institution for Women for appropriate treatment and supervision. Transfer of a male inmate under the age of 18 to Central Prison will require approval of the Command Manager or the Division Duty Officer.
 - (5) The approving authority for the use of restraints for immobilization should consult with the facility Medical staff as well as the facility or Area Mental Health staff who will examine the inmate as soon as possible, and at least every four hours thereafter, and will document those examinations in the inmate's medical record.
 - (6) Reasonable effort will be made to avoid undue physical hardship for restrained inmates. Restrained inmates will be temporarily released from immobilization every three hours during the first and second shifts, so they may eat, drink, and take care of their bodily functions. During the third shift, an inmate may not be temporarily released, unless the inmate requests release to take care of bodily functions. Periodic observation will be required every 15 minutes while immobilized and will be documented on Form DC-141.
 - (7) The use of therapeutic restraints as part of mental health treatment is outlined in the Health Care Procedures Manual at Section 418.
- (e) Tear Gas.
 - (1) Tear gas canisters and other tear gas weapons will be used only if an exit is available to a ventilated area or can be made available to a ventilated area for the inmates following the return of control.
 - (2) Affected inmates will be given the opportunity to shower and will receive clean clothes once control has been established.
 - (3) Only the Officer-In-Charge of the correctional facility may authorize the use of tear gas.
- (f) Firearms.
 - (1) The use of firearms are authorized in the deadly force situations described in Rule .1502 (c) of this Section.
 - (2) In an emergency, the Emergency Response Commander may authorize the use of firearms to assure compliance with a lawful order when failure to comply jeopardizes the safety of the public, staff, or other inmates to the extent that serious injury or death is likely to occur.
 - (3) No firearms of any description shall be allowed at any time in a correctional facility except as directed by the Emergency Response Commander.

- (4) No firearm is to be left unattended or unsecured at any time or in any place accessible to the public or inmates, either directly or indirectly.
- (5) An officer should apply good safety techniques when it is necessary to run with a firearm in hand.
- (6) An officer should avoid firing from a moving vehicle.
- (7) An officer should avoid firing warning shots but when good judgment dictates their use, care shall be taken to not injure other persons or property.

*History Note: Statutory Authority G.S. 148-11; 148-46;
Eff. November 1, 1991.*

.1506 MEDICAL RESPONSE

(a) A medical evaluation will be conducted on each inmate involved in a use of force incident. Medical evaluations will be made available to staff involved in a use of force incident. Any injury to staff should be evaluated and documented and treatment provided. Medical evaluation and treatment of an inmate shall be provided by correctional medical staff or, if not available, by the nearest medical facility.

(b) The Officer-In-Charge will determine whether or not immediate medical attention is required for an inmate. Application of one or more of the following circumstances will require medical evaluation and treatment immediately:

- (1) The inmate complains of injury;
- (2) Staff observe any injury;
- (3) Staff employed a firearm, mace, a baton or any other device likely to cause injury; or
- (4) The amount of force used has rendered the inmate immobile, unconscious or unable to communicate.

Inmates not requiring immediate medical attention will receive a medical evaluation as soon as medical staff are available.

*History Note: Statutory Authority G.S. 148-11; 148-46;
Eff. November 1, 1991.*

.1507 REPORTING PROCEDURES

(a) Each correctional staff member involved in an incident requiring the use of force will immediately make a comprehensive report to the Officer-In-Charge of the facility. The report will include all relevant facts including the time and place of the incident, the names of all staff and inmate participants and witnesses, specific nature, description, and duration of the use of force, and an explanation of the circumstances that made use of force necessary.

(b) The Officer-In-Charge will report to the Director of Prisons or Division Duty Officer through the chain of command, or the Division Duty Officer structure, any use of force incident involving firearms or any use of force resulting in serious injury to inmates or staff (See 5 NCAC 2F .2400, Reporting Procedures).

(c) The Officer-In-Charge or designee will then investigate to determine whether the reports of the involved staff are accurate and complete and will order additional reports and information as necessary.

(d) As part of the investigation, the Officer-In-Charge or designee shall:

- (1) Obtain a statement from the involved inmate to allow an explanation of his version of the incident;
- (2) Obtain statements from staff and inmate witnesses;
- (3) Obtain a statement from the facility health authority or other medical personnel who examined or treated the inmate and/or staff; and
- (4) Make a determination as to whether the force used was in accordance with this policy.

(e) The Officer-In-Charge or designee will report the results of the investigation on Form DC-422, Use of Force Report, and submit the report through the chain of command to the appropriate Command Manager. Written statements of all witnesses should be attached.

(f) Use of Force Reports should be completed within five working days. Extensions may be granted by the Area Complex Administrator or Institution Head.

*History Note: Statutory Authority G.S. 148-11; 148-46;
Eff. November 1, 1991.*

.1508 VIDEO RECORDING OF USE OF FORCE INCIDENTS

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- (a) Facilities designated by the Director will use video cameras to record anticipated use of force incidents.
- (b) The Superintendent/Warden shall issue Standard Operating Procedures governing the operation, viewing and maintenance of video tape records.
- (c) During an emergency response operation, the Emergency Response Commander may deviate from the requirements of this policy.
- (d) Facility procedures will be approved by the appropriate Command Manager and will include the following requirements:
 - (1) A video recording shall be made of all incidents where correctional staff anticipate the use of physical force.
 - (2) A sufficient number of staff shall be trained in the use of video equipment to ensure 24-hour availability.
 - (3) A sufficient number of supervisory staff shall be designated as Incident Supervisors to direct the recording of anticipated use of force incidents.
 - (4) Prior to taking corrective action against the inmate, each recording will begin with an on-camera briefing of the staff by the Incident Supervisor regarding what is to take place.
- (e) Video Tape Records Maintenance and Use.
 - (1) All video tape recordings will be documented by the Incident Supervisor on the Form DC-422A and attached to the Use of Force Report (Form DC-422).
 - (2) All video tape recordings of use of force incidents will be transcribed to a master video, documented on a master tape ledger, and maintained for five years. No master tape will be disposed of without consultation with the Attorney General's Office to determine if the tape should be preserved for litigation purposes.
 - (3) Viewing of video tapes will be for the purposes of investigation and other official departmental uses.
 - (4) The superintendent/warden shall approve any viewing or use of video recordings by departmental personnel.
 - (5) The Director of Prisons or designee shall approve the viewing or use of video recordings by persons outside the Department of Correction.

*History Note: Statutory Authority G.S. 148-11; 148-46;
Eff. November 1, 1991.*

SECTION .1600 - MANAGEMENT OF SECURITY POSTS

.1601 RESPONSIBILITY .1602 SECURITY POSTS

*History Note: Statutory Authority G.S. 148-4; 148-11;
Eff. September 15, 1976;
Repealed Eff. November 1, 1991.*

SECTION .1700 - EMERGENCY RESPONSE

.1701 POLICY .1702 PLANS FOR EMERGENCIES .1703 REPORTING PROCEDURES

*History Note: Statutory Authority G.S. 148-4; 148-11;
Eff. September 15, 1976;
Repealed Eff. November 1, 1991.*

SECTION .1800 - CONTROL OF FIREARMS

.1801 GENERAL .1802 RESPONSIBILITIES

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. November 1, 1976;*

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*Amended Eff. October 1, 1990;
Repealed Eff. November 1, 1991.*

- .1803 APPROVED STANDARD ITEMS
- .1804 WEAPONS MAINTENANCE SCHEDULE
- .1805 WEAPONS INVENTORY, CONTROL, AND ISSUE
- .1806 LOST WEAPONS
- .1807 SNIPER EQUIPMENT
- .1808 PROFICIENCY
- .1809 STORAGE OF WEAPONS

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. October 1, 1990;
Repealed Eff. November 1, 1991.*

SECTION .1900 - CUSTODY AND SECURITY

- .1901 SELECTION AND CLASSIFICATION OF INMATES
- .1902 SUPERVISORY PERSONNEL
- .1903 TRANSPORTING INMATES
- .1904 SUPERVISION DURING WORK ASSIGNMENTS
- .1905 WEATHER CONDITIONS
- .1906 SPECIAL DUTIES FOR SUPERINTENDENT
- .1907 FIREARMS: MACE AND RESTRAINTS

*History Note: Statutory Authority G.S. 143B-261.1; 148-26;
Eff. May 1, 1978;
Repealed Eff. November 1, 1991.*

SECTION .2400 - KEY CONTROL

- .2401 PURPOSE
- .2402 RESPONSIBILITY
- .2403 PROCEDURES
- .2404 OTHER REQUIREMENTS

*History Note: Statutory Authority G.S. 148-11;
Eff. January 1, 1990;
Repealed Eff. November 1, 1991.*

SECTION .2600 - INMATE DRUG AND ALCOHOL TESTING

.2601 PURPOSE

The purpose of this policy is to specify the conditions and procedures for conducting drug testing of inmates. The Division of Prisons has a responsibility to protect the public, to provide a safe environment for staff and inmates, and to enforce the rules and regulations governing inmate conduct. The goal of the Division of Prisons is to preserve order and maintain security. Drug use presents a threat to the safety of staff and inmates. Drug testing of inmates combined with appropriate sanctions is an effective means of suppressing drug use, drug trafficking, and drug-related infractions, including institutional violence.

*History Note: Statutory Authority G.S. 148-11;
Eff. November 1, 1991.*

.2602 RESPONSIBILITY

(a) The Chief of Security is responsible for establishing and monitoring the drug testing program for inmates in the Division of Prisons and monitoring test results.

(b) The superintendent warden is responsible for the implementation of the drug testing program at that facility.

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(c) Facility medical staff are responsible for reviewing medication orders for inmates who have tested positive for drugs.

(d) Staff involved in the drug testing program at the facility are responsible for carrying out their duties according to the standard operating procedures for the drug testing program.

(e) All staff of the Division of Prisons is responsible for reporting to the facility superintendent or designee any evidence and observations that suggest illegal drug use or other drug related activity.

(f) Drug testing technicians are responsible for testing urine samples and reporting results, and maintaining all drug testing forms and test data.

*History Note: Statutory Authority G.S. 148-11;
Eff. November 1, 1991.*

.2603 URINALYSIS

(a) Reasons for testing inmates. The following are examples of when an inmate may be subject to urinalysis:

- (1) Upon initial admission to the Division of Prisons or upon admission to specified facilities involved in the drug testing program;
- (2) As part of the random drug testing program;
- (3) When an inmate is found to be in possession of drugs or drug paraphernalia or when drugs or drug paraphernalia are found in an area that is controlled, occupied, or inhabited by the inmate;
- (4) When staff have documented reason to believe that the inmate has or is using drugs. This may be based on the behavior of the inmate or on reliable information from informants. The reliability of the informant should be documented;
- (5) When suspicious behavior that suggests drug use or drug related activity by the inmate or his visitors is observed during visitation;
- (6) When an inmate returns from any community based program late or in some suspicious way that suggests drug use or drug related activity;
- (7) As part of a drug abuse prevention program;
- (8) When an inmate has tested positive on a previous urinalysis.
- (9) When an inmate is being considered for placement in community based programs such as work release, study release, family visits, and the community volunteer program.

(b) Authority to designate inmates for testing.

- (1) Inmates selected for random testing will be chosen by a random selection process, whereby the identity of the inmate is not known by selection personnel when the inmate is chosen for testing.
- (2) Other inmates selected for testing will be identified by the facility superintendent or designee.

(c) Sample Collection.

- (1) Before collecting a urine sample, the processing officer will positively identify the inmate by name and prison number.
- (2) A clear, non-reuseable plastic container designed for the collection and storage of urine samples will be provided to the inmate by the processing officer just prior to the collection of the urine sample.
- (3) The observing officer, who will be of the same sex as the inmate being tested, will escort the inmate to an area that provides privacy from visual observation by others. The observing officer will give the inmate a direct order to provide a urine sample. The collection of the urine sample will be observed only by the inmate and the observing officer, unless there is a legitimate security need for the presence of additional staff.
- (4) If an inmate is unwilling to provide a urine sample within two hours of an order to do so, the collecting officer should initiate disciplinary action against the inmate for disobeying a direct order. To eliminate the possibility of diluted or adulterated samples, staff shall keep the inmate under direct visual supervision during this two hour period or until a urine sample is furnished. To assist the inmate in giving a sample, staff shall offer the inmate eight ounces of water at the beginning of the two hour period. An inmate is presumed to be unwilling if the inmate fails to provide a urine sample within the two hour period. An inmate may rebut this presumption during the disciplinary process.
- (5) The inmate will seal the sample container, the processing officer will label the container, and the inmate will be instructed to sign the "This is my sample" line of the label. If the inmate refuses to sign the label, the processing officer will document the inmate's refusal on the label.

- (6) In the presence of the inmate, the processing officer will place tamper resistant evidence tape on the container, place the sealed container in a plastic ziploc bag, which is then sealed with evidence tape, and place the bag with the container in the transport rack.
- (d) Specimen Control.
 - (1) All samples must be held in a secure environment until testing is conducted. Samples held more than 24 hours before testing must be refrigerated.
 - (2) A written record on the location and transportation of the urine samples at all times must be maintained so that a chain of custody is documented from the time that the inmate provides the urine sample until it is tested by the lab technician. Whenever custody of the specimen changes, the receiver will check the seals on the containers and document such.
- (e) Results of Testing.
 - (1) All samples with a positive result will be re-tested using the same testing technology. After a positive result is reported to the facility superintendent, facility medical staff will review the inmate's medical records to determine what prescribed or over the counter medications the inmate is currently taking and consult with the laboratory technician to discuss the possibility of a false positive result. If there is no basis for a false positive result, disciplinary action will be initiated against the inmate for manufacturing, possessing, introducing, selling or using any unauthorized controlled substance, unauthorized intoxicant or alcoholic beverage, or possessing associated equipment.
 - (2) An inmate with a negative test result is still subject to disciplinary action if there is behavioral or other evidence to warrant such disciplinary action.
 - (3) If disciplinary action is taken against an inmate as a result of the test results, the inmate will be given the opportunity during the disciplinary hearing to challenge the validity of the test results.
 - (4) If an inmate refuses to submit a urine sample, disciplinary action will be initiated against the inmate for willfully disobeying or failing to obey promptly or causing another inmate to disobey or fail to obey promptly and properly any lawful order of a prison official or employee, or any lawful order to which subject.

*History Note: Statutory Authority G.S. 149-11;
Eff. November 1, 1991.*

.2604 BREATH ALCOHOL TESTING

- (a) Reasons for Testing Inmates. The following are examples of when an inmate is subject to breath alcohol testing:
 - (1) When staff has documented reason to believe that the inmate has or is using alcohol. This may be based on the behavior of the inmate or on reliable information from informants. The reliability of the informants should be documented.
 - (2) When an inmate is found to be in possession of alcohol.
 - (3) As part of an alcohol use prevention program.
 - (4) As part of the random breath alcohol testing.
 - (5) When an inmate returns from any community based program late or in some suspicious way that suggest alcohol use or alcohol related activity.
 - (6) When an inmate has tested positive on a previous breath alcohol test.
- (b) Authority to Designate Inmates for Testing.
 - (1) Inmates selected for random testing will be chosen by a random selection process, whereby the identity of the inmate is not known by selection personnel when the inmate is chosen for testing.
 - (2) Other inmates selected for testing will be identified by the facility superintendent or designee.
- (c) Sample Collection. Procedures for breath alcohol testing are outlined in the instructional manual for the equipment used to conduct the breath alcohol testing. Breath alcohol testing will be done by personnel appropriately trained in breath alcohol testing procedures and breath alcohol testing equipment.
- (d) Results of Testing.
 - (1) Based on the results (any positive reading) of the breath alcohol testing, disciplinary action will be initiated against the inmate for manufacturing, possessing, introducing, selling or using any unauthorized controlled substance, unauthorized intoxicant or alcoholic beverage, or possessing associated equipment. Confirmatory testing of breath alcohol testing will not be conducted, unless the testing officer has doubts as to the validity of that particular inmate's test.

- (2) If disciplinary action is taken against the inmate as a result of the breath alcohol testing, the inmate will be given the opportunity during the disciplinary hearing to challenge the validity of the test results.
- (3) If an inmate refuses to submit to a breath alcohol test, disciplinary action will be initiated against the inmate for willfully disobeying or failing to obey promptly or causing another inmate to disobey or fail to obey promptly and properly any lawful order of a prison official or employee, or any lawful order to which subject.

*History Note: Statutory Authority G.S. 148-11;
Eff. November 1, 1991.*

**TITLE 17
DEPARTMENT OF REVENUE**

CHAPTER 1 - DEPARTMENTAL RULES

SUBCHAPTER 1C - GENERAL ADMINISTRATION

SECTION .0300 - GENERAL ADMINISTRATIVE FORMS

.0323 FEE FOR REPORTS, DOCUMENTS, I.E., TAX FORMS

The Department of Revenue, as provided for by law, may charge a fee of ten dollars (\$10.00) for certain tax forms when a request for a specific form exceeds 25. The ten dollar (\$10.00) fee is for a minimum of 100 forms and allows the Department to recover printing and mailing costs. There is no charge for a form when the request for that particular form does not exceed 25. A listing of the forms for which a ten dollar (\$10.00) fee may be charged are listed below:

- D-400 - Individual Income Tax Return
- D-400EZ - Individual Income Tax Return
- D-400X - Amended Individual Income Tax Return
- D-401 - Individual Income Tax Instructions
- D-400TC - Tax Credits
- D-403 - Partnership Return
- D-403A - Instructions for Filing Partnership Return
- NC-40 - Estimated Income Tax for Individuals
- CD-404 - Domestic Corporation Franchise and Income Tax Return
- CD-405 - North Carolina Franchise and Income Tax Return - Multi-State Corporation
- CD-444 - Amended North Carolina Corporation Franchise and Income Tax Return
- CD-415 - Corporation Franchise and Income Tax Instructions
- CD-401S - S Corporation Franchise and Income Tax Return
- H-801 - Intangible Personal Property Tax Return
- Schedules A & B - Schedule of Accounts Receivable and Accounts Payable; Proration of Payables
- Schedule C - Schedule for Computing Taxable Value of a Beneficial or Equitable Interest in a Foreign Trust
- H-819 - Intangibles Tax Instructions
- D-407 - Fiduciary Return
- D-407A - Instructions for Filing Fiduciary Return
- D-410 - Application for Automatic Extension of Time to File State Income Tax Returns
- D-401A - Application for Additional Extension of Time to File State Income Tax Returns
- D-422 - Underpayment of Estimated Tax by Individuals
- D-422A - Annualized Income Installment Worksheet
- D-499 - Application for Tax Credit for Qualified Business Investments
- CD-414A - North Carolina Corporation Income Tax Credit
- CD-414B - Credit for New Jobs in Distressed Counties
- CD-419 - Application for Extension for Filing Corporate Franchise and Income Tax Return
- CD-429 - Declaration of Estimated Income Tax
- H-834 - Request for Extension for Filing Return

The Department makes a fifteen dollar (\$15.00) charge for the book entitled "Revenue Laws of North Carolina" for each additional copy in excess of the one free copy allowed per request.

*History Note: Statutory Authority G.S. 105-257; 105-262;
Eff. November 1, 1991.*

CHAPTER 4 - LICENSE AND EXCISE TAX DIVISION

SUBCHAPTER 4D - SOFT DRINK TAX

SECTION .0900 - MONTHLY REPORT, INVOICE AND BOND REQUIREMENTS

.0908 INVOICING REQUIREMENTS

(a) Sales invoices of distributors and wholesalers, whether resident or nonresident, liable for the tax shall indicate payment of the excise tax on bottled soft drinks and base products by the wording "North Carolina Soft Drink Tax Paid."

(b) All sales invoices of nonresident distributors or wholesalers shall show the point of origin and mode of transportation for all shipments of bottled soft drinks or base products into this State.

*History Note: Statutory Authority G.S. 105-113.51; 105-113.58; 105-262;
Eff. October 1, 1991;
Amended Eff. November 1, 1991.*

CHAPTER 8 - INTANGIBLES TAX DIVISION

SECTION .0500 - NOTES: BONDS AND OTHER EVIDENCES OF DEBT

.0504 NOTES: BONDS: ETC. SUBJECT TO TAXATION

Notes, bonds and other evidences of debt which are subject to intangibles tax include, but are not limited to, the following:

- (1) personal and business notes receivable;
- (2) mortgage notes receivable;
- (3) commercial paper;
- (4) conditional sales contracts (written agreements whereby title to the property remains with the seller until the goods are paid for);
- (5) lease agreements with "option to purchase" which are classified as conditional sales contracts for sales tax purposes;
- (6) notes due from affiliated companies;
- (7) accrued interest receivable from notes, bonds and other evidences of debt;
- (8) participation certificates;
- (9) bonds and debentures of both domestic and foreign corporations;
- (10) church bonds;
- (11) bonds and evidences of debt of other states and their political subdivisions;
- (12) bonds, debentures, master notes and capital notes (not certificates of deposit) issued by commercial banks;
- (13) bonds and notes of the Federal National Mortgage Association;
- (14) bonds of public housing authorities organized under laws of other states;
- (15) sales or gift agreements whereby the seller or donor has only an irrevocable right to receive income on an "annuity" basis; Actual value of such agreements should be determined in the same manner as a beneficial interest in a foreign trust;
- (16) investment contracts and accumulation plans;
- (17) "Repurchase Agreements" issued by financial institutions;
- (18) notes, bonds, participation certificates (including GNMA pass-through and pooled income certificates) which are the obligations of nonexempt quasi governmental agencies, commercial banks or other mortgage lenders even though the payment of principal and interest is guaranteed by the U.S. government;
- (19) land sales contracts;
- (20) amounts due from a commercial factor as a result of the sale of accounts receivable pursuant to a factoring agreement;
- (21) receivables of banks under retail credit card plans.

FINAL RULES

History Note: Statutory Authority G.S. 105-202; 105-262;

Eff. February 1, 1976;

Amended Eff. November 1, 1991; February 1, 1991; August 1, 1986; December 1, 1985.

ARRC OBJECTIONS

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

Temporary Rules are noted by "". These Rules have already gone into effect.*

ECONOMIC AND COMMUNITY DEVELOPMENT

Employment and Training

* 4 NCAC 20B .0903 - Allocation of Grants	ARRC Objection	8/22/91
No Response from Agency		9/19/91
* 4 NCAC 20B .0905 - Eligibility	ARRC Objection	8/22/91
No Response from Agency		9/19/91
* 4 NCAC 20B .0907 - Cost Limitations/ Categories	ARRC Objection	8/22/91
No Response from Agency		9/19/91
* 4 NCAC 20B .0908 - Reporting	ARRC Objection	8/22/91
No Response from Agency		9/19/91
* 4 NCAC 20B .0909 - Performance Standards	ARRC Objection	8/22/91
No Response from Agency		9/19/91
* 4 NCAC 20B .0911 - Fund Availability	ARRC Objection	8/22/91
No Response from Agency		9/19/91

EDUCATION

Elementary and Secondary Education

16 NCAC 6B .0001 - School Bus Drivers	ARRC Objection	9/19/91
16 NCAC 6D .0103 - Graduation Requirements	ARRC Objection	9/19/91
* 16 NCAC 6E .0301 - Driver Training	ARRC Objection	8/22/91
Agency Responded		9/19/91

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

15A NCAC 16A .0804 - Financial Eligibility	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Responded	No Action	3/21/91
No Response from Agency	No Action	4/18/91
15A NCAC 16A .0806 - Billing the HIV Health Services Program	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Responded	No Action	3/21/91
No Response from Agency	No Action	4/18/91

Coastal Management

15A NCAC 7J .0301 - Who is Entitled to a Contested Case Hearing	ARRC Objection	9/19/91
15A NCAC 7J .0302 - Petition for Contested Case Hearing	ARRC Objection	9/19/91

Environmental Management

15A NCAC 2D .1102 - Applicability	ARRC Objection	8/22/91
	No Action	9/19/91

ARRC OBJECTIONS

<i>15A NCAC 2D .1203 - Test Methods and Procedures</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/22/91</i>
<i>15A NCAC 2D .1208 - Operator Training Requirements</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
	<i>No Action</i>	<i>9/19/91</i>
<i>15A NCAC 2D .1209 - Compliance Schedules</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/22/91</i>

Forest Resources

<i>15A NCAC 9C .1007 - America the Beautiful Grant Program</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>9/19/91</i>

Wildlife

<i>15A NCAC 10A .1001 - Particular Offenses</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>9/19/91</i>
<i>15A NCAC 10K .0001 - Course Requirements</i>	<i>ARRC Objection</i>	<i>7/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/22/91</i>

HUMAN RESOURCES

Aging

<i>10 NCAC 22M .0101 - Scope of Care Management</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22M .0102 - Definitions</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22M .0103 - Target Population</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22M .0203 - Assessment and Reassessment</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22M .0204 - Care Planning</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22N .0101 - Definitions for Confidentiality of Client Data</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22N .0205 - Security of Records</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22N .0208 - Client Access to Records</i>	<i>ARRC Objection</i>	<i>9/19/91</i>

Children's Services

<i>10 NCAC 41I .0406 - Responsibility for Training of Team Members</i>	<i>ARRC Objection</i>	<i>7/18/91</i>
<i>Pending Correction</i>		<i>8/22/91</i>

Economic Opportunity

<i>* 10 NCAC 51F .0102 - Definitions</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>No Response from Agency</i>		<i>9/19/91</i>
<i>* 10 NCAC 51F .0202 - Ineligible Activities</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>No Response from Agency</i>		<i>9/19/91</i>
<i>* 10 NCAC 51F .0402 - Eligibility Requirements</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>No Response from Agency</i>		<i>9/19/91</i>
<i>* 10 NCAC 51F .0501 - Grant Agreement</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>No Response from Agency</i>		<i>9/19/91</i>

Facility Services

<i>10 NCAC 3U .0604 - General Safety Requirements</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>Agency Revised Rules</i>	<i>Obj. Removed</i>	<i>9/19/91</i>
<i>10 NCAC 3U .0804 - Infectious and Contagious Diseases</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>Agency Revised Rules</i>	<i>Obj. Removed</i>	<i>9/19/91</i>

Individual and Family Support

ARRC OBJECTIONS

10 NCAC 42B .1201 - Personnel Requirements	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
Agency Filed Rule with OAH	Rule Eff.	8/01/91
10 NCAC 42C .2001 - Qualifications of Administrator	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
Agency Filed Rule with OAH	Rule Eff.	8/01/91
10 NCAC 42C .2002 - Qualifications of Supervisor-in-Charge	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
Agency Filed Rule with OAH	Rule Eff.	8/01/91
10 NCAC 42C .2006 - Qualifications of Activities Coordinator	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
Agency Filed Rule with OAH	Rule Eff.	8/01/91

Medical Assistance

10 NCAC 50B .0305 - Deprivation	ARRC Objection	8/22/91
Agency Revised Rule	Obj. Removed	8/22/91

Mental Health: General

10 NCAC 14K .0103 - Definitions	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14K .0320 - Incident Reporting	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14K .0337 - Emergency Care Permission	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14K .0351 - Administration of Medication	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14M .0206 - Day Services	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14M .0209 - Community Resources	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14M .0409 - Community Resources	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14O .0310 - Provision of Appropriate Activities	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14P .0101 - Scope	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14P .0102 - Definitions	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14Q .0101 - Policy/Rights Restrictions/Interventions	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14R .0104 - Seclusion/Restraint/Isolation Time Out	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14R .0105 - Protective Devices	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14S .0102 - Communication Rights	ARRC Objection	9/19/91
10 NCAC 14S .0103 - Living Environment	ARRC Objection	9/19/91

Mental Health: Other Programs

ARRC OBJECTIONS

10 NCAC 18L .0603 - Svc Purpose/Eligibility Requirements Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
10 NCAC 18M .0704 - Staff Requirements Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
10 NCAC 18Q .0809 - Agreement Between Resident and Program Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91

INSURANCE

Engineering and Building Codes

11 NCAC 8 .0815 - Final Board Order Agency Revised Rule	ARRC Objection 7/18/91 Obj. Removed 8/22/91
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JUSTICE

Criminal Information

12 NCAC 4E .0103 - Advisory Policy Board Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0104 - Definitions Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0106 - Manuals Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0203 - Non-Terminal Access Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0301 - User Agreement Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0302 - User Access Fee Agreement Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0401 - DCJ Terminal Operator Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0403 - Suspension/Revocation of Operator Certification Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4F .0203 - Hit Confirmation Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4F .0301 - Arrest Fingerprint Card Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4F .0404 - Ind's Right/Review/His/Her/Crim History Record Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4F .0405 - Use/CCH/Lic/Non-Criminal Justice Emp Purposes Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4F .0501 - Expungements Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4G .0102 - Penalty Provisions Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4G .0201 - Notice of Violation Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4G .0301 - Informal Hearing Procedure Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91

LICENSING BOARDS AND COMMISSIONS

Architecture

ARRC OBJECTIONS

21 NCAC 2 .0601 - Committee on Investigations
Agency Revised Rule

ARRC Objection 9/19/91
Obj. Removed 9/19/91

Cosmetic Art Examiners

21 NCAC 14F .0010 - Sanitary Rules
No Response from Agency
Agency Requested Additional Time
Agency Responded Will Repeal Rule

ARRC Objection 5/16/91
No Action 7/18/91
7/18/91
Obj. Removed 8/22/91

Practicing Psychologists

21 NCAC 54 .1701 - Information Required
Agency Revised Rule
21 NCAC 54 .1704 - Review Procedure
Agency Revised Rule
21 NCAC 54 .2103 - Reinstatement
Agency Revised Rule

ARRC Objection 8/22/91
Obj. Removed 9/19/91
ARRC Objection 8/22/91
Obj. Removed 8/22/91
ARRC Objection 8/22/91
Obj. Removed 9/19/91

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

15A NCAC 21D .0802(b)(2) - AVAILABILITY

Robert Roosevelt Reilly Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0802(b)(2) void as applied in *Wilson's Supermarket #12, Petitioner v. Department of Environment, Health, and Natural Resources, Respondent* (91 EHR 0795).

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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NORTH CAROLINA ADMINISTRATIVE CODE

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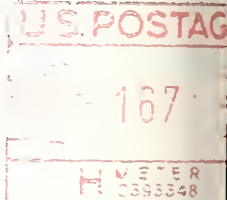
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